138-525
138-525

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~1112~~ ~~751~~ ~~4444~~ 145

WILLIAM CRESSEY AND THE STATE OF LOUISIANA, APPELLANTS,

vs.

HERMANN MEYER, BERNARD LEMANN, MEYER LEMANN, RICHARD T. HANSON, PEDRO LANDREAUX, MARIE LOUISE LANDREAUX, CHARLES GETZINGER, BERTHELEMY BEAUBAY, MRS. GEORGE JOSIAH LORD, AND THE CITIZENS' BANK OF LOUISIANA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 5, 1887.

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vs.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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a *Transcript of Appeal.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

WILLIAM CRESSEY, Appellant,
vs.
THE CONSOLIDATED ASSOCIATION OF THE PLANTERS OF LOUISIANA, Appellees. } No. 10432.

Joseph P. Hornor, Esquire, for appellant; R. H. Marr and Rouse & Grant, Esquires, for appellees; M. J. Cunningham, attorney general of the State of Louisiana.

Appeal returnable to the Supreme Court of the United States of America, at the city of Washington, D. C., on the second Monday of October, A. D. 1887.

1 *Bill. Filed December 12th*, 1883.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

WILLIAM CRESSEY
vs.
THE CONSOLIDATED ASSOCIATION OF THE PLANTERS OF LOUISIANA. } No. 10432.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

William Cressey, an alien and a subject of the Queen of Great Britain and Ireland and Empress of India, brings this his bill, on his own behalf and in behalf of all other holders of bonds similar to those held by him and hereinafter particularly described, against the Consolidated Association of the Planters of Louisiana and against Robert W. Adams, John Calhoun, John Calder, John Borland, William H. Byrnes, and John O. Scannell, constituting the board of managers and directors of said Consolidated Association last elected and appointed and in office.

And thereupon your orator complains and says—

1st. That under and by virtue of an act of the General
2 Assembly of the State of Louisiana, approved on the 16th of March, 1827, the Consolidated Association of Planters of Louisiana was duly incorporated, with all the rights and franchises of a corporation, in addition to such other rights as are therein specially set forth and delegated to said association; that, by virtue of said act of incorporation, the Consolidated Association of Planters was authorized to contract a loan for two millions of dollars ($2,000,000.00) on the faith of certificates of indebtedness to be issued by the president and countersigned by the secretary under the supervision of the board of directors of said association; that the sum so loaned was to constitute the money sinking capital of said associ-

ation; that said act authorized the corporation to raise a subscription to capital stock for the sum of two millions five hundred thousand dollars ($2,500,000.00), divided into shares of five hundred dollars each, intended to secure the loan of two millions of dollars; that, in payment of the aforesaid subscription to the capital stock of said association, the subscribers were to furnish their bonds or obligations, secured by mortgage on property within the State of Louisiana; that the subscriptions to said stock were confined by the provisions of said act to the planters of the State of Louisiana.

2d. That on the 19th February, 1828, the aforesaid act of incorporation was amended by an act of the General Assembly, and the said association was therein authorized to increase their loan from two millions of dollars to two millions five hundred thousand dollars, and the amount of subscriptions to secure said loan in-
3 creased from two millions five hundred thousand dollars to three millions of dollars; that, in order to facilitate the negotiation of the loan of two millions five hundred thousand dollars authorized by the act aforesaid, the faith of the State of Louisiana was thereby pledged for the reimbursement of the capital of the said sum.

3d. That by the aforesaid acts the profits and earnings resulting from the sinkings of the bank, as well as the stock subscriptions and mortgages furnished to secure said subscriptions as aforesaid, were constituted a trust fund for the security and payment of the loan of two million five hundred thousand dollars, which, as heretofore set forth, constituted the capital of said association; that under the aforesaid acts the State of Louisiana issued her bonds, signed by the Governor and countersigned by the treasurer, under the seal of the State of Louisiana, payable to the order of the Consolidated Association of the Planters of Louisiana in five, ten, and fifteen years, with interest thereon, payable semi-annually; that, by virtue of the act of incorporation and acts amendatory thereof, the charter of said Consolidated Association of the Planters of Louisiana was to expire M'ch 16, 1843; that the bonds issued under the acts aforesaid to secure the loan of two millions five hundred thousand dollars were payable, as your orator is informed, one-third on June 30th, 1833, one-third on June 30th, 1838, and one-third on June 30th, 1843; that the bonds which were payable on the 30th June, 1833, were, to the best of your orator's information and belief, discharged
4 and extinguished.

4th. That by an act of the General Assembly approved March 21st, 1835, the board of directors of said association was authorized, if in their judgment it was advisable, to postpone to the 30th June, 1848, or to any nearer period the payment, in whole or in part, of the bonds secured by the State which would mature and become due and payable on 30 June, 1838, and on 30 June, 1843; that by said act it was provided that after the payment of the aforesaid bonds on 30 June, 1848, a delay of two years was to be granted to said bank in order to liquidate and close its affairs.

5th. That under the act of 1835 aforesaid the original bonds were returned to the State in order to enable the association to have the

benefit of the act aforesaid in obtaining the extension of time, and other bonds in their place and stead were issued to the holders thereof and payable, in accordance with the provisions of the act of 1835, on the 30th June, 1848.

6th. That prior to the maturity of the bonds so extended to 30th June, 1848, and anticipating the inability of the bank to meet its obligations, and in order to protect the State of Louisiana against loss by their failure to pay said bonds, the General Assembly passed an act on 6 April, 1847, by which the managers and directors of the association were authorized to extend, by endorsement or otherwise, the bonds of the State in favor of the bank for a period of six, nine, twelve, fifteen, and eighteen years, reserving the right to the stockholders to discharge them sooner if in their judgment they
5 saw fit, and extending the liquidation of the association until the maturity and payment of the bonds thus extended; that in accordance with the provisions of the above-recited act the bonds aforesaid were extended by endorsement and were payable in instalments of fifths in the years 1854, 1857, 1863, and 1866, all of which will more fully appear by reference to said bonds, hereto annexed and for greater certainty made part hereof as Exhibit A.

7th. That in 1866, at which time the aforesaid bonds were to be discharged and extinguished in full under and by virtue of the act of 6 April, 1847, the General Assembly of Louisiana passed an act, approved February 26, 1866, authorizing the managers and directors of the said association to negotiate to the postponement of the payment of the State bonds and coupons in favor of the bank for a period of ten years from June 30, 1866, reserving to the stockholders the right to extinguish them at an earlier period and continuing the liquidation until the maturity and payment of said bonds.

8th. That your orator is the holder and owner of three (3) certain bonds issued by the State of Louisiana under the acts heretofore recited and set forth, payable to the order of the said Consolidated Association and by them endorsed, each for the sum of one thousand dollars and numbered 1034, 382, and 1199, and under the act of 1847, by which the managers and directors were empowered to extend the payment of the bonds issued under the acts of 1827, 1828, and 1835 for a period of six, nine, twelve, fifteen, and eighteen years, and of which they availed themselves by paying one-
6 fifth of the amount of the bonds every three years after 1854, with the exception of 1866, at which time they failed to fulfill their obligations; that under the provisions of the act of 1866, as heretofore set forth, there remaining a balance due on the bonds of the State of one-fifth of their face value, which was the last payment under the extension granted by the act of 1847, on the 30th June, 1866, the managers of said Consolidated Association through their agent, A. Schreiber, issued bonds which were annexed and made part of the State bonds and were with them identified and numbered; that to the said bonds coupons were attached and the payment of the one-fifth or the remaining balance under the extension of the act of 1847 was payable in instalments on the 30th of June, in 1870, 1872, 1874, and 1876, with coupons for interest

thereon, payable semi-annually in accordance with the provisions of the acts of 1827 and 1828, all of which will more fully appear by reference to the bonds, hereto annexed for greater certainty and made part hereof as Exhibit B.

9th. That the said association paid some of the instalments due under the extension of 1866, but they have failed and refused to pay the other instalments and interest thereon, and that there is now due and owing to your orator, and for which he has made demand, six hundred and ninety-two .50 dollars for the remaining instalments and interest, with interest thereon, on the three bonds held and owned by your orator, as will more fully appear by reference to said bonds issued by the State and those issued by the man-
7 agers and directors of said association, which are hereto annexed and made part hereof as Exhibits A and B.

10th. That the assets of said association consisted of mortgages on real estate given by the members thereof to secure the payment of their obligations for stock subscriptions in said association, and that whatever other property the association now owns has been realized from stock mortgages, all of which said property was constituted by law a specially designated trust fund for the security and payment of the past and present obligations of said association, and that said bondholders have a special lien and privilege thereon and are entitled by the acts authorizing the issue of said bonds to be recognized as the *cestui que trust* of said property and funds, and the said trust attached to the original bonds endorsed by said association, and has continued in favor of said obligations and the holders thereof throughout their various transformations.

11th. That by a judgment of a competent court of jurisdiction of the State of Louisiana, dated on or about November 17th, 1842, the charter of said association was decreed to be forfeited and its status as an existing corporation with banking powers was thereby brought to an end, but by the 28th section of the act of the General Assembly of Louisiana of 14 March, 1842, "to provide for the liquidation of banks," under which act the said forfeiture was decreed as aforesaid, it is expressly provided that as to banks in which the State is a stockholder or for which it has issued bonds or is in any manner liable, within which category your orator avers was the said Con-
8 solidated Association, "if a decree of forfeiture be pronounced against any one of such banks, the corporation shall not be deemed to be dissolved, but it shall retain its corporate powers and privileges," with certain exceptions named in said section; and by the 29th section of said act it is provided that as soon as the Governor shall have ascertained that such a decree has been rendered he shall appoint six managers for such bank, who shall elect among themselves a president, by whom the affairs thereof shall thereafter be conducted in the corporate name; that under the foregoing acts and acts amendatory thereof the affairs of said association connected with the liquidation were conducted and carried on in the corporate name, by six managers appointed in the manner provided in said acts, from the time of the judgment of forfeiture of the charter as aforesaid, in the year 1842, until the year 1847, when an

act of the General Assembly of Louisiana of April 6, 1847, No. 100, was passed, by the second section of which act it was provided that the Governor, immediately after the promulgation of the act and every two years thereafter, should appoint three managers to constitute the board of bank managers, one of whom was to be president of the said association, and by the third section of which act it was provided that the president of said Consolidated Association should call a meeting of the stockholders on the first Monday of February in each year to elect from among themselves three directors, to constitute with the said managers the board of managers and directors of the said association; that under said act No. 100, of March 6, 1847, and an act of the General Assembly of
9 Louisiana, No. 38, of February 26, 1866, the said association has fully organized and maintained its corporate existence from and after the passage of said act No. 100, of April 6, 1847, and the liquidation and settlement of the affairs of said association was continued and carried on by board of managers and directors appointed and elected in conformity to the aforesaid provisions of said acts of 1847 and 1866, until on or about the 17th of June, 1876, when the board of managers and directors then in office abandoned the control and management of the affairs of said association, and shortly thereafter, on 7th September, 1876, a bill in equity was filed in this honorable court praying for the judicial liquidation of said association, in the suit entitled Max Grebner *vs.* B. F. Flanders *et als.*, No. 7940 of the docket, and after due proceedings this hon. court took judicial possession of the property of said association and appointed receivers, who took corporal possession thereof and were proceeding to liquidate said association.

12th. That on the 30th March, 1878, the Legislature of Louisiana passed act No. 20 of the extra session of 1878 (Session Acts 1878, p. 254), entitled "An act to provide for the further liquidation of the Consolidated Association of the Planters of Louisiana," &c., &c., in the first section of which the hon. the judges of this hon. court were requested to rescind the orders appointing receivers for said corporation, and to restore its assets and affairs to the control and possession of the president and directors, as then organized
10 under the act No. 113 of 1853, which was declared to continue in force, except that the Governor was authorized to appoint three non-stockholding directors in addition to those provided by said act No. 113 of 1853; that shortly after the passage of said act the said president and directors, appointed and organized as therein provided, made application to this hon. court, in accordance with the provisions of said act, for the rescinding of the orders appointing the receivers in said suit and for the restoration to them of the assets of said association, but said application was not granted.

13th. On 20th March, 1879, by consent of the complainant in said suit of Grebner *vs.* Flanders and of all parties thereto, except Huntington and Champlin, a decree was entered in this hon. court by which the appointment of said receivers was vacated and the property of said association in their hands was ordered to be turned over to the president and directors of said association as appointed and

organized under the said act No. 20 of 1878; that thereupon said Huntington and Champlin took an appeal from said decree, which operated as a supersedeas, which they afterwards abandoned and dismissed, and said decree was executed and the property and assets transferred accordingly on 5 June, 1880, by virtue of an order of this hon. court of said date, and said property and assets have been in the hands of said president and directors ever since, all of which will more fully appear by reference to the record of said suit of Grebner *vs.* Flanders, No. 7940 of the docket of this hon. court, which is hereto annexed and prayed to be taken as part of this bill;

11 that by sec. 5 of said act No. 20 of 1878 it was provided that it should be the duty of the president and directors of said association, as soon as they should be restored to possession, to convert into cash all the assets, corporeal and incorporeal, of said association (except the stock mortgages) in the most speedy and effectual manner, disposing of the same on such terms of credit and settling with debtors on such safe and secure terms as they may deem most advantageous, and as fast as funds are realized from said assets they shall invest the same in consolidated bonds of Louisiana, all of which, your orator is informed, has been wholly neglected to be done by the defendants herein, altho' more than three years have elapsed since they were restored to the possession of the assets of said association, thus still unnecessarily prolonging the liquidation.

14th. That the course of pretended liquidation of the affairs of said association has been reckless and extravagant and *have* endured an unconscionable time—since 1842—and *are* apparently no nearer the end now than then, during all of which time the assets of said association have been consumed in useless salaries and expenses that are still going on; that in the case of the president and directors of the Consolidated Association of the Planters of Louisiana *vs.* Lord, decided by the supreme court of Louisiana in April, 1883, it was held by a majority of that court that "the horde of officers—president, vice-president, cashier, receivers, directors—pass before us in this record in lengthened procession, laden with salaries and plethoric with stipends; and the lean and slippered stock-

12 holder, gaunt from forty years' exhaustion, at last holds up his hands in eager, passionate suppliance for relief;" and the opinion goes on to find that for "only five and a half years of the forty-one that *has* elapsed since the decree of 1842 terminated the corporate existence of the association the expenses amounted to $58,630.74. This is the domestic expenditure from June, 1876, to January, 1882;" and in a concurring opinion in the same case it is held: "The well-known history of this interminable liquidation informs us that this contract has not been faithfully executed by the board entrusted with its management, and the subsequent insolvency of a large number of the stockholders has rendered impossible any collection from them. * * * The neglect of duty and other unauthorized acts of the officers of the State in this liquidation have been expressly acknowledged and proclaimed by the Legislature in the preamble of act No. 20 of 1878;" all of which act-

ings and doings enure to the great wrong and injury of your orator and the other holders of said bonds, and will have the effect, if allowed to continue, of finally absorbing all of the property and assets of said association, leaving nothing for its creditors, and that it is for the benefit and interest of all concerned that the said property and assets be immediately converted into money and distributed among the creditors.

15th. That the said R. W. Adams, John Calhoun, John Calder, John Borland, Wm. H. Byrnes, and John O. Scannell were the last appointed directors and managers of said association under the said act No. 20 of 1878, and said R. W. Adams was the president last appointed and in office, and that no other managers, directors, or president have since been elected or appointed.

13 16th. That the said defendants have a large sum of money and other assets in their possession or under their control, the property of said association, which your orator believes will be uselessly disbursed by them in various ways, as hereinabove set forth, and in the cultivation of sugar, rice, and cotton plantations, whereas all of said assets and money have been by law dedicated to the payment and extinguishment of the outstanding obligations of said association.

17th. That your orator, as a creditor of said association for the amount of bonds held by him as aforesaid, has a special lien and privilege, as aforesaid, upon the assets and property of said association, and is entitled to the aid and assistance of this hon. court to enforce the same and render the same available to him, and thus, by reason of said special lien and privilege in his favor, he is entitled to maintain this suit against said association without having previously reduced his claim against it to judgment, and upon the further ground that the said assets are being disbursed and absorbed to his injury and prejudice and to the injury and prejudice of the other bondholders.

18th. That by reason of the premises it is necessary, for the purpose of collecting the assets of said association and of realizing and administering the same for the payment of the debts and obligations of said association, including the debt due to your orator—it is urgently necessary that a receiver of the property and assets of said association, with the usual powers, should be appointed.

14 19th. That there is imminent danger to the rights of the creditors of said association, including your orator, by the defendants having actual custody and control of the assets and money of said association, and that unless restrained by this hon. court from expending the money of said association for any purpose whatever, from cultivating plantations, from employing accountants or other clerks, and from the exercise of each and every act of administration of said association, it will cause your orator great damage and irreparable injury.

20th. Your orator respectfully submits it to the court whether the stockholders of the said Consolidated Association of the Planters of Louisiana, who are numerous and widely dispersed throughout the State, and whose names and residences are in general unknown to

your orator, are necessary parties to this bill, and in case the court shall so consider your orator prays discovery from the defendants, who are in possession of all the books and records of the bank, of the names, citizenship, and residences of such stockholders, with leave to your orator, should it be held requisite, to make them parties by amendments to the bill hereafter to be made.

All of which actings and doings are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises. Forasmuch, therefore, as your orator is without relief at law, and is relievable only in a court of equity, where matters of this nature are cognizable and relievable, may it please your
15 honors to decree that your orator is holder and owner of the bonds heretofore specifically set forth and numbered, and that he has a special and equitable lien and privilege therefor on all the assets and property of said association, and that one or more persons be appointed receivers to take hold and administer the assets of said association under the direction of this hon. court, and to collect all the amounts due said association, and that all parties having possession of assets, securities, books, papers, vouchers, or effects of said association be ordered to deliver them up to such receiver, and that said R. W. Adams, John Calhoun, John Calder, John Borland, William H. Byrnes, and John O. Scannell be enjoined and restrained from drawing any money deposited in any bank or any other institution which may be to the credit of said association, and that said parties be restrained from selling or causing to be sold or disposed of any of the property, assets, or effects of said association, and that said parties be enjoined from expending money for the cultivation of plantations or disbursing any money for any purpose whatever on account of said association, from employing accountants or clerks, and from doing any act as president or directors or managers of said association or for the administration of the same, and that your honors, out of the fund to be realized by the receiver to be appointed, order the debt due your orator as aforesaid by said association be paid in due course of administration *pro rata* with other debts lawfully due by said association, and bearing lien upon the assets of said association concurrent with that of your orator, and that all other lawful creditors of said as-
16 sociation have leave to come in under the decree to prove their debts and to participate in the fund to be realized; and your orator prays for all such other and further relief in the premises as equity may require or to your honors may seem meet—

May it please your honors to grant unto your orator a restraining order, to be directed to all of said parties defendant, restraining them from doing any of the said acts sought to be enjoined, and that receiver *in limine* be appointed until such time as a motion for an injunction and the appointment of a receiver can be heard and determined hereon, and until the further order of this court.

May it please your honors to grant unto your orator writs of subpœna, to be directed to said "The Consolidated Association of the Planters of Louisiana," through its president, R. W. Adams, and to said defendants, R. W. Adams, John Colburn, John Calder, John

Borland, William H. Byrnes, and John O. Scannell, commanding them and each of them, by a certain day and under a certain penalty therein to be limited, personally to be and appear in this hon. court, and then and there full, true, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such decree or order in the premises as to your honors shall seem meet.

(Signed) JOSEPH P. HORNOR AND
F. W. BAKER,
Solicitors.

17 William Cressey, being duly sworn, says that he is a subject of the Queen of Great Britain and Ireland and Empress of India, and that he is the complainant in the foregoing bill, and that the amount claimed in the foregoing bill is now due and owing to him, and he says that all and singular the facts and averments therein contained are true except as to those which are alleged upon information, and as to those he believes they are true.

(Signed) WILLIAM CRESSEY.

Sworn to and subscribed before me this 10th day of December, 1883.

[SEAL.] (Signed) WM. H. PASCOE,
Not. Pub.

Exhibits Filed with Bill.

D, No. 1034.

One thousand dollars.

Know all men by these presents that the State of Louisiana acknowledges to be indebted unto the president, directors, and company of the Consolidated Association of the Planters of Lou-
18 isiana in the sum of one thousand dollars, which sum the said State of Louisiana promises to pay in current money of the United States, to the order of said president, directors, and company, on the thirtieth day of June, in the year one thousand eight hundred and forty-eight, with interest at the rate of five per centum per annum, payable half-yearly, at the place named in the endorsement hereof, viz., on the thirtieth June and thirty-first December of every year, until payment of said principal sum.

In testimony whereof the Governor of the State of Louisiana has signed and the treasurer of said State has countersigned these presents and caused the seal of the State to be affixed thereto, at New Orleans, this first day of May, in the year of our Lord one thousand eight hundred and thirty-six.

This bond is payable by fifths in the years 1854, 1857, 1860, 1863, & 1865.

[SEAL.] E. D. WHITE, *Governor.*

Countersigned:
F. GARDERE, *Treasurer.*
2—1112

Written on back.

The holder of this bond consents to receive payment of the same as follows, viz:

200 dollars on 30th June, 1854;
19 200 dollars on 30th June, 1857;
200 do. on 30th " 1860;
200 dollars on 30th June, 1863;
200 do. on 30th " 1866,

in New Orleans, at the banking office of the Consolidated Association of the Planters of Louisiana, with interest at the rate of 5 per cent. per annum, to the respective maturities, under the conditions and stipulations contained in the annex, signed at Amsterdam the 15th August, 1848, which is hereby made part of said bond.

We, the undersigned, Hugues Lavergne, president, and Alphonse Miltenberger, cashier, of the Consolidated Association of the Planters of Louisiana, for value received, do hereby endorse and transfer the within bond of one thousand dollars, bearing interest of the rate of five per centum per annum, to the order of —— ——, and do hereby bind the State of Louisiana and the president, directors, and company of the Consolidated Association of the Planters of Louisiana to pay the said interest half-yearly, on the thirtieth day of June and thirty-first day of December of each year, in the city of London, at the counting-house of Messrs. F'co de Lizardi & Co., at the exchange of four shillings and six pence sterling per dollar, upon presentation and delivery of the dividend warrants in the margin hereof; and also do bind the said president, directors, and company to reimburse the principal, at the same place, at the exchange of four shillings and six pence sterling per dollar, upon presentation and delivery of this bond on the day when this bond becomes due.

20 H. LAVERGNE, *President.*
A. MILTENBERGER, *Cashier.*

The holder of this bond consents to receive payment of the same as follows, viz:

100 dollars on 30th June, 1870;
100 dollars on 30th June, 1872;
100 dollars on 30th June, 1874;
100 dollars on 30th June, 1876,

with interest at the rate of 5 per cent. per annum, to the respective maturities, under the conditions and stipulations contained in the annex, signed at Amsterdam the 16th September, 1866, which is hereby made part of said bond.

Louisiana State Bond.

D, No. 1034.

Consolidated Association.

Know all men by these presents that the managers and directors of the Consolidated Association of the Planters of Louisiana, by

virtue of an act of the State of Louisiana, approved February 26th, 1866, and entitled "An act providing for the final liquidation of the Consolidated Association of the Planters of Louisiana," hereby engage and bind the said association, through me, their undersigned and authorized agent, to pay, in New Orleans, at their bank-
21 ing house, the amount remaining due on bond of the State of Louisiana, D, No. 1034, dated 1st May, 1836, and due 30th June, 1848, in the following mode and proportions, viz:

One hundred dollars on 30th June, 1870;
One hundred dollars on 30th June, 1872;
One hundred dollars on 30th June, 1874;
One hundred dollars on 30th June, 1876,

against delivery of the respective warrants hereunto annexed, which will serve as receipts; and this bond shall be considered as a proof of the debt from the State of Louisiana and the Consolidated Association to the holder for no other sum than the aggregate amount of such warrants as may remain in the possession of said holder. The last instalment will be paid only on delivery of the original bond.

The Consolidated Association of the Planters of Louisiana hereby engages also to pay regularly, at its office, in New Orleans, the half-yearly dividend warrants annexed hereto at their respective maturities, and solemnly declares that nothing in this document or arrangement is intended to release the State of Louisiana from its engagements towards the holder of the bond D, No. 1034, nor shall be construed to release or discharge any right of the holder to the securities given by the mortgages granted under and by virtue of the act of incorporation of the said bank and acts amendatory thereto approved by the Governor of the State of Louisiana.

In testimony whereof the agent and representative of the managers and directors of the Consolidated Association of the
22 Planters of Louisiana, holding full power to bind the said association, has signed these presents in Amsterdam the sixteenth day of September, in the year of our Lord one thousand eight hundred and sixty-six.

A. SCHREIBER, *Agent.*

D, No. 24.

Louisiana State Bond No. 1034.

$100 (one hundred dollars), part of the principal of the Louisiana State bond for one thousand dollars, bearing the above number and dated the 1st May, 1836, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana, on the 30th June, 1876.

This warrant is only payable on the surrender of the bond to which it is attached and also of the Louisiana State bond bearing the above number.

A. SCHREIBER, *Agent.*

D, No. 1199.

One thousand dollars.

Know all men by these presents that the State of Louisiana acknowledges to be indebted unto the president, directors, and company of the Consolidated Association of the Planters of Louisiana in the sum of one thousand dollars, which sum the said State
23 of Louisiana promises to pay in current money of the United States, to the order of said president, directors, and company, on the thirtieth day of June, in the year one thousand eight hundred and forty-eight, with interest at the rate of five per centum per annum, payable half-yearly, at the place named in the endorsement hereof, viz., on the thirtieth June and thirty-first December of every year, until payment of said principal sum.

In testimony whereof the Governor of the State of Louisiana has signed and the treasurer of said State has countersigned these presents and caused the seal of the State to be affixed thereto, at New Orleans, this first day of May, in the year of our Lord one thousand eight hundred and thirty-six.

This bond is payable by fifths in the years 1854, 1857, 1860, 1863, & 1866.

[SEAL.] E. D. WHITE, *Governor.*

Countersigned:
F. GARDERE, *Treasurer.*

(Written on back.)

The holder of this bond consents to receive payment of the same as follows, viz:

200 dollars on 30th June, 1854;
24 200 do. on 30th " 1857;
200 do. on 30th " 1860;
200 dollars on 30th June, 1863;
200 do. on 30th " 1866,

in New Orleans, at the banking office of the Consolidated Association of the Planters of Louisiana, with interest at the rate of 5 per cent. per annum, to the respective maturities, under the conditions and stipulations contained in the annex, signed at Amsterdam the 15th August, 1848, which is hereby made part of said bond.

We, the undersigned, Hugues Lavergne, president, and Alphonse Miltenberger, cashier, of the Consolidated Association of the Planters of Louisiana, for value received, do hereby endorse and transfer the within bond of one thousand dollars, bearing interest at the rate of five per centum per annum, to the order of —— ——, and do hereby bind the State of Louisiana and the president, directors, and company of the Consolidated Association of the Planters of Louisiana to pay the said interest half-yearly, on the thirtieth day of June and thirty-first day of December of each year, in the city of London, at the counting-house of Messrs. F'co de Lizardi & Co., at the exchange

of four shillings and six pence sterling per dollar, upon presentation and delivery of the dividend warrants in the margin hereof; and also do bind the said president, directors, and company to reimburse the principal, at the same place, at the exchange of four shillings and six pence sterling per dollar, upon presentation and delivery of this bond on the day when this bond becomes due.

25 H. LAVERGNE, *President.*
A. MILTENBERGER, *Cashier.*

The holder of this bond consents to receive payment of the same as follows, viz:

100 dollars on 30th June, 1870;
100 dollars on 30th June, 1872;
100 dollars on 30th June, 1874;
100 dollars on 30th June, 1876,

with interest at the rate of 5 per cent. per annum, to the respective maturities, under the conditions and stipulations contained in the annex, signed at Amsterdam the 16th September, 1866, which is hereby made part of said bond.

Louisiana State Bond.

D, No. 1199.

Consolidated Association.

Know all men by these presents that the managers and directors of the Consolidated Association of the Planters of Louisiana, by virtue of an act of the State of Louisiana approved February 26th, 1866, and entitled "An act providing for the final liquidation of the Consolidated Association of the Planters of Louisiana," hereby engage and bind the said association, through me, their undersigned
26 and authorized agent, to pay, in New Orleans, at their banking-house, the amount remaining due on bond of the State of Louisiana, D, No. 1199, dated 1st May, 1836, and due 30th June, 1848, in the following mode and proportions, viz:

One hundred dollars on 30th June, 1870;
One hundred dollars on 30th June, 1872;
One hundred dollars on 30th June, 1874;
One hundred dollars on 30th June, 1876,

against delivery of the respective warrants hereunto annexed, which will serve as receipts; and this bond shall be considered as a proof of the debt from the State of Louisiana and the Consolidated Association to the holder for no other sum than the aggregate amount of such warrants as may remain in the possession of said holder. The last installment will be paid only on delivery of the original bond.

The Consolidated Association of the Planters of Louisiana hereby engages also to pay regularly, at its office, in New Orleans, the half-yearly dividend warrants annexed hereto at their respective maturities, and solemnly declares that nothing in this document or arrangement is intended to release the State of Louisiana from its en-

gagements towards the holder of the bond D, No. 1199, nor shall be construed to release or discharge any right of the holder to the securities given by the mortgages granted under and by virtue of the act of incorporation of the said bank and acts amendatory thereto approved by the Governor of the State of Louisiana.

27 In testimony whereof the agent and representative of the managers and directors of the Consolidated Association of the Planters of Louisiana, holding full power — bind the said association, has signed these presents in Amsterdam the sixteenth day of September, in the year of our Lord one thousand eight hundred and sixty-six.

A. SCHREIBER, *Agent.*

D, No. 16.

Louisiana State Bond No. 1199.

$5, being six months' dividend on two hundred dollars, due on the 30th June, 1873, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. S., *Agent.*

D, No. 17.

Louisiana State Bond No. 1199.

$5, being six months' dividend on two hundred dollars, due on the 31st December, 1873, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. S., *Agent.*

D, No. 18.

Louisiana State Bond No. 1199.

28 $5, being six months' dividend on two hundred dollars, due on the 30th June, 1874, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. S., *Agent.*

D, No. 21.

Louisiana State Bond No. 1199.

$2.50, being six months' dividend on one hundred dollars, due on the 30th June, 1875, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. S., *Agent.*

D, No. 22.

Louisiana State Bond No. 1199.

$2.50, being six months' dividend on one hundred dollars, due on the 31st December, 1875, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. S., *Agent.*

D, No. 23.

Louisiana State Bond No. 1199.

$2.50, being six months' dividend on one hundred dollars, due on the 30th June, 1876, payable in New Orleans, at the office of
29 the Consolidated Association of the Planters of Louisiana.

A. S., *Agent.*

D, No. 24.

Louisiana State Bond No. 1199.

$100 (one hundred dollars), part of the principal of the Louisiana State bond for one thousand dollars, bearing the above number and dated the 1st May, 1836, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana, on the 30th June, 1876.

This warrant is only payable on the surrender of the bond to which it is attached, and also of the Louisiana State bond bearing the above number.

A. SCHREIBER, *Agent.*

D, No. 382.

One thousand dollars.

Know all men by these presents that the State of Louisiana acknowledges to be indebted unto the president, directors, and
30 company of the Consolidated Association of the Planters of Louisiana in the sum of one thousand dollars, which sum the said State of Louisiana promises to pay in current money of the United States, to the order of said president, directors, and company, on the thirtieth day of June, in the year one thousand eight hundred and forty-eight, with interest at the rate of five per centum per annum, payable half-yearly, at the place named in the endorsement hereof, viz., on the thirtieth June and thirty-first December of every year, until payment of said principal sum.

In testimony whereof the Governor of the State of Louisiana has signed and the treasurer of said State has countersigned these presents and caused the seal of the State to be affixed thereto, at New Orleans, this first day of May, in the year of our Lord one thousand eight hundred and thirty-six.

This bond is payable by fifths in the years 1854, 1857, 1860, 1863, & 1866.

[SEAL.] E. D. WHITE, *Governor.*

Countersigned:
F. GARDERE, *Treasurer.*

Written on back.

The holder of this bond consents to receive payment of the
31 same as follows, viz:
200 dollars on 30th June, 1854;

200 dollars on 30th June, 1857;
200 do. on 30th " 1860;
200 do. on 30th " 1863;
200 do. on 30th " 1866,

in New Orleans, at the banking office of the Consolidated Association of the Planters of Louisiana, with interest at the rate of 5 per cent. per annum, to the respective maturities, under the conditions and stipulations contained in the annex, signed at Amsterdam the 15th August, 1848, which is hereby made part of said bond.

We, the undersigned, Hugues Lavergne, president, and Alphonse Miltenberger, cashier, of the Consolidated Association of the Planters of Louisiana, for value received, do hereby endorse and transfer the within bond of one thousand dollars, bearing interest at the rate of five per centum per annum, to the order of —— ——, and do hereby bind the State of Louisiana and the president, directors, and company of the Consolidated Association of the Planters of Louisiana to pay the said interest half-yearly, on the thirtieth day of June and thirty-first day of December of each year, in the city of London, at the counting-house of Messrs. F'co de Lizardi & Co., at the exchange of four shillings and six pence sterling per dollar, upon presentation and delivery of the dividend warrants in the margin hereof; and also do bind the said president, directors, and company to reimburse
the principal, at the same place, at the exchange of four
32 shillings and six pence sterling per dollar, upon presentation and delivery of this bond on the day when this bond becomes due.

H. LAVERGNE, *President.*
A. MILTENBERGER, *Cashier.*

Louisiana State Bond.

D, No. 382.

Consolidated Association.

Know all men by these presents that the managers and directors of the Consolidated Association of the Planters of Louisiana, by virtue of an act of the State of Louisiana, approved 6 April, 1847, and entitled "An act to protect the State against loss on account of its liabilities for bonds issued for the use of the property banks," hereby engage and bind the said association, through me, their undersigned and authorized agent, to pay, in New Orleans, at their banking-house, the bond of the State of Louisiana, D, No. 382, dated 1st May, 1836, and due 30th June, 1848, in the following mode and proportions, viz:

Two hundred dollars on 30th June, 1854;
Two hundred dollars on 30th June, 1857;
Two hundred dollars on 30th June, 1860;
Two hundred dollars on 30th June, 1863;
Two hundred dollars on 30th June, 1866,

against delivery of the respective warrants hereunto annexed,
33 which shall serve as receipts; and this bond shall be considered as a proof of the debt from the State of Louisiana and

the Consolidated Association to the holder for no other sum than the aggregate amount of such warrants as may remain in the possession of said holder. The last instalment will be paid only on delivery of the original bond.

The Consolidated Association of the Planters of Louisiana hereby engages also to pay regularly, at its office, in New Orleans, the half-yearly dividend warrants annexed hereto at their respective maturities, and solemnly declares that nothing in this document or arrangement is intended to release the State of Louisiana from its engagements towards the holder of the bond, D, No. 382, nor shall be construed to release or discharge any right of the holder to the securities given by the mortgages granted under and by virtue of the act of incorporation of the said bank and acts amendatory thereto approved by the Governor of the State of Louisiana.

In testimony whereof the agent and representative of the managers and directors of the Consolidated Association of the Planters of Louisiana, holding full power to bind the said association, has signed these presents in Amsterdam the fifteenth day of August, in the year of our Lord one thousand eight hundred and forty-eight.

A. B. ROMAN, *Agent.*

34

D, No. 32.

Louisiana State Bond No. 382.

$10, being six months' dividend on four hundred dollars, due on the 31st December, 1862, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. B. R., *Agent.*

D, No. 33.

Louisiana State Bond No. 382.

$10, being six months' dividend on four hundred dollars, due on the 30th June, 1863, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. B. R., *Agent.*

D, No. 34.

Louisiana State Bond No. 382.

$200 (two hundred dollars), part of the principal of the Louisiana State bond for one thousand dollars, bearing the above number and dated the 1st May, 1836, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana, on the 30th June, 1863.

A. B. ROMAN, *Agent.*

35 D, No. 35.

Louisiana State Bond No. 382.

$5, being sixth months' dividend on two hundred dollars, due on the 31st December, 1863, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. W. R., *Agent.*

D, No. 36.

Louisiana State Bond No. 382.

$5, being six months' dividend on two hundred dollars, due on the 30th June, 1864, payable in New Orleans, at the office Consolidated Association of the Planters of Louisiana.

A. B. R., *Agent.*

D, No. 37.

Louisiana State Bond No. 382.

$5, being six months' dividend on two hundred dollars, due on the 31st December, 1864, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. B. R., *Agent.*

D, No. 38.

Louisiana State Bond No. 382.

36 $5, being six months' dividend on two hundred dollars, due on the 30th June, 1865, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. B. R., *Agent.*

D, No. 39.

Louisiana State Bond No. 382.

$5, being six months' dividend on two hundred dollars, due on the 31st December, 1865, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. B. R., *Agent.*

D, No. 40.

Louisiana State Bond No. 382.

$5, being six months' dividend on two hundred dollars, due on the 30th June, 1866, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. W. R., *Agent.*

D, No. 41.

Louisiana State Bond No. 382.

$200 (two hundred dollars), part of the principal of the Louisiana State bond for one thousand dollars, bearing the above num-
37 ber and dated the 1st May, 1836, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana, on the 30th June, 1866.

This warrant is only payable on the surrender of the bond to which it is attached, and also of the Louisiana State bond bearing the above number.

A. B. ROMAN, *Agent.*

D, No. 31.

Louisiana State Bond No. 382.

$10, being six months' dividend on four hundred dollars, due on the 30th June, 1862, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. B. R., *Agent.*

D, No. 30.

Louisiana State Bond No. 382.

$10, being six months' dividend on four hundred dollars, due on the 31st December, 1861, payable in New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. B. R., *Agent.*

D. No. 29.

38 *Louisiana State Bond No.* 382.

$10, being six months' dividend on four hundred dollars, due on the 30th June, 1861, payable at New Orleans, at the office of the Consolidated Association of the Planters of Louisiana.

A. B. R., *Agent.*

Amended Bill. Filed, by Leave of Court, January 29th, 1884.

In the Circuit Court of the United States for the Eastern District of Louisiana. In Equity.

WILLIAM CRESSEY
vs.
THE CONSOLIDATED ASSOCIATION OF THE PLANTERS OF LOUISIANA *et als.* } No. 10432.

And now, with leave of court, the said complainant, William Cressey, a subject of the Queen of Great Britain and Ireland and Empress of India, brings this his amended bill of complaint against the Consolidated Association of the Planters of Louisiana, a body corporate, created by and heretofore and now existing under the laws of the State of Louisiana and a citizen of said State, and
39 against Robert W. Adams, John Calhoun, John Calder, John Borland, William H. Byrnes, and John O. Scannell, constituting the board of managers and directors of said association last elected, appointed, and in office, and all citizens of said State of Louisiana, and against the following-named parties who have respectively assumed or incurred the liabilities and obligations of stockholders of said corporation, viz: Armand Darcantel, Levi J. Harris, Charles T. Dugazon, Albert Dufour, Louis Dulane, Henry Beer, Charles E. Fenner, Benjamin S. Harrison, Leon Godchaux, Pierre Lanaux

Charles W. Commack, John Barkley, Edward Smith, George Gamper, Dominique Gast, George A. Lanaux, James E. Zunts, Harrison Kelly, Mistress J. V. Gourdain and her husband, J. V. Gourdain; John Chaffe, Armand N. Coycault, Emile Loulie, Mistress Elmire Verret, widow of Martial Le Boeuf, Mistress Elodie Verret, wife of Leon Bernard, and her said husband; Mistress Rosa T. Espenna, wife of John Morgan, and her said husband; Mistress Widow Armia Brand Ledoux, Miss Annie Ledoux, Miss Angele Ledoux and Mrs. Gabrielle Ledoux, Widow Angeline Avegno Lapayre, Auguste Dubail, widow Theophile Dubail; Widow Solidelle Dubuclet Parent, Mistress Louise de Bacathier, widow of William C. C. Claiborne, Barthelemy Beonbay, Mistress Thelude Le Carpentier, widow of A. M. Morphy, Paul Morphy, Edwin Morphy, Mistress Malvina Morphy, wife of John D. Lybrandt, and her said husband; Helen Morphy, Jules A. Blanc, Paul Liantand, Coralie Lalovie, Martha Ann McNeil, Margaret McNeil, Collin E. McNeil, Mistress Josephine Dejan, wife of Pierre Dejan, and her said husband; Bernard St. Upery, Nicholas M. Benaché, Mistress Julia Riley, wife of Edward J. De Hart, and her
40 said husband; Marco Givanovich, Helena Gottschalk, widow Samuel Jamison, Mistress John I. Noble, wife of John I. Noble, and her said husband; Patrick H. Foley, Abraham Levi, Jules Levergne, Idalie Lavergne, widow of Raoul Labranche, Philip Lavergne, and Mistress George J. Lord, widow of George J. Lord, all of the city of New Orleans; Thomas H. Milburn, J. Fortune Zaringue, Onesime Rexner, Charles Keiner, Manuel Perrin, Paul Perrin, Matthew Lotz, Henry Toker, Rosamond Perrin, Joseph Getzinger, Charles Getzinger, of the parish of Jefferson; Mistress Widow Jules Villeré, René T. Beauregard, Henry T. Beauregard, and Laure T. Beauregard, of the parish of Plaquemines; Mistress Marie A. Aysand, widow of Philibert Dupuy, Jules Aysand, and Edward N. Pugh, of the parish of Ascension; Marie P. Landry, wife of Ernest Robichand, and her said husband, Desiré P. Landry; Mary L. Jones, wife of Geo. W. Jones, and her said husband; Bernard Lehman, Meyer Lehman, Richard T. Hanson, Valsin Landry, and Louis V. Folse, of the parish of Assumption; Mrs. Irene Smith, wife of U. Williams, and her said husband, of the parish of East Baton Rouge; Auguste Levert, of the parish of West Baton Rouge; Henry S. Sandford, Etienne Marie, widow Julia A. Ventriss, and John Schlaler, of the parish of Iberville; Wellington Evans, Emond Abadie, Laure Abadie, and widow Thomas Pugh, of the parish of La Fourche; William H. Aymar, widow Marie Louise Roman, widow Lucien Malus, Octave Jacob, and Jerome E. Poché, of the parish of St. James; Joseph Le Bourgeois, of the parish of St. John the Baptist; Emile Rost, and Mistress Philomene M. Labranche, wife of Jas. W. Godberry, Jr., and her said husband, of the parish of St. Charles; widow C. Dela-
41 houssaye, Valcour Martin, Alexander Declouet, Pierre G. Declouet, William J. Declouet, Henry Dapit, Edward Zénon, and Oscar Francisque, of the parish of St. Martin; Herman Meyer, Hypolite Pargaud, Joseph R. McLearn, James L. Nelson, and Mrs. Malinda T. Layton, wife of Robert Layton, and her said husband, of the parish of Ouachita; Benjamin Brumfield and Benjamin Richardson,

of the parish of Washington, all of said above-named persons being citizens of Louisiana, and the Citizens' Bank of Louisiana and the New Orleans Canal and Banking Company, bodies corporate by the laws of Louisiana and citizens of said State; and thereupon your orator complains and says:

1. That by an act of the General Assembly of the State of Louisiana of March 16th, 1827, entitled "An act to incorporate the subscribers to the Consolidated Association of the Planters of the State of Louisiana," it was by the first section thereof enacted that an institution should be established under the title of the Consolidated Association of the Planters of Louisiana, the capital of which should amount to two million of dollars, to be raised by means of a loan to be obtained by the directors of the institution, and by the 2nd section thereof it was enacted that a subscription for a sum of two million five hundred thousand dollars, intended to secure the loan of two million of dollars, should be opened immediately after the passage of the act, divided into shares of five hundred dollars each; and by the third section it was enacted that planters exclusively should be entitled to subscribe, and that the shares so subscribed for by them
42 should only be transferable to planters.

In order to procure the loan authorized by the act the 4th section thereof provided that the president, directors, and company of said institution should deliver their bonds in the form prescribed by the section, bearing interest at the rate of five per cent. per annum, payable half-yearly, one-third of said bonds to be made payable in five years, one-third in ten years, and one-third in fifteen years after their date; by the 5th section of said act the subscribers to said association were required to give mortgages, to the satisfaction of the board of directors, on immovable property for an amount equal to the shares for which they should have subscribed, and by the 6th section of said act it was enacted that the subscribers to said association, upon compliance with the terms of the 5th section, should be entitled to a credit equal to a moiety of the total amount of their shares, upon the terms stated in said 6th section. By the 7th section of said act the subscribers to said association were created a corporation and body politic, to continue as such until the 30th of June, 1842, with the usual powers and franchises of a private corporation and with the power "to discount upon banking principles on such credit and such security as they shall think advisable," provided it did not exceed in value the double of their capital; and by other sections of said act the said corporation was authorized to receive money on deposit and to issue its notes for circulation.

By the 13th and 14th sections of said act it was provided
43 that the annual profits of said institution, if any there should be, should remain deposited with said institution and be used by its directors in discounting notes until the expiration of the charter, and that then, after all of its debts should have been paid, any profits that should have been made should be divided between the stockholders of the corporation in proportion to the amount of their shares.

By the 22nd section of said act it was enacted that on all mort-

gages executed under said act the said corporation should "have the right to seize the property mortgaged, in whatever hands it may be, in the same manner and with the same facilities that it could be seized in the hands of the mortgagor, notwithstanding any sale or change of the title or possession thereof, by inheritance or otherwise.

And by the 23d, 24th, and 25th sections of said act it was enacted that in all hypothecary contracts entered into by any individual with or in favor of said corporation the wife of such individual, if of the age of majority, might bind herself jointly and *in solido* with him, so as to bind the property of the wife, either dotal or of any other description; and that in case a mortgage debtor of said corporation should obtain a respite from his creditors or make a surrender of his property in insolvency the hypothecary rights and executory remedies of said corporation should be in nowise affected thereby.

Complainant says that shortly after the passage of said act of March 16th, 1827, the entire stock subscription of two million
44 five hundred thousand dollars therein provided for was taken up by a small number of planters, and the corporation was duly organized under and in accordance with the provisions of the act; that each of said subscribers acknowledged by authentic act that he was personally indebted to said corporation, on account of such subscription, in a sum of five hundred dollars for each share of stock subscribed for, and to secure said personal indebtedness executed in favor of said corporation a special mortgage on property of adequate value, in conformity to the terms and requirements of said act of March 16th, 1876, as hereinbefore stated and set forth.

But complainant says that said Consolidated Association, consisting at the time, as he is informed and believes, of about one hundred planters, constituting said corporation, was unable to borrow, upon the credit of its corporate bonds of and the said stock mortgages and personal liability of the corporators, the said sum of two million dollars, as contemplated by said act, to constitute its cash capital or any part thereof.

2. That thereupon the said subscribers to the stock of said association and the promoters of said scheme of banking on borrowed money applied to the General Assembly of the State of Louisiana at its then next ensuing session and procured the passage of an act amendatory of said act of March 16th, 1827, which amendatory act was approved February 19th, 1828, and is act No. 19 of the acts of the General Assembly of that year.

By said amendatory act the amount of capital stock of said corporation to be subscribed for and secured in the manner pro-
45 vided for in said act of March 16th, 1887, was increased from two million five hundred thousand to three million dollars, and the amount of the loan authorized to be effected to furnish the cash capital of the corporation was increased from two million to two million five hundred thousand dollars, and to enable the said corporation to procure said sum the said subscribers to its capital stock, who were to be the principal if not sole beneficiaries of the

loan, procured the State of Louisiana, in and by said amendatory act for the benefit of said private corporation and its stockholders, to engage and pledge the public faith of the State for the payment and reimbursement of said loan and to obligate itself to pay on said account the sum of two million five hundred thousand dollars in principal, and interest thereon to a very large amount, for which said amount of two million five hundred thousand dollars, on the terms prescribed for the bonds of the corporation by the said act of March 16th, 1827, as hereinbefore stated and set forth, were, under the requirement of the 4th section of said act of Feb. 19th, 1828, bonds of the State of Louisiana, signed by the Governor and countersigned by the treasurer and under the seal of the State, and made payable to the order of the president, directors, and company of the Consolidated Association of the Planters of Louisiana; that the said bonds were all sold in the money markets of the world and the entire proceeds of such sale were received by said private corporation and applied to its corporate uses and to the individual uses of its stockholders, in conformity to the terms of said acts of March
46 16th, 1827, and February 19th, 1828, under the terms of which they were entitled to borrow from said bank to the extent of one moiety of the stock subscription of three million of dollars, or one million five hundred thousand dollars, out of the two million five hundred thousand dollars procured as aforesaid by inducing the Legislature of Louisiana to pawn the public faith for the reimbursement of said loan.

Complainant is advised and says that by effect of the terms and stipulations of said bonds so as aforesaid issued in aid of said Consolidated Association by the State of Louisiana the said State became directly indebted to the holders of said securities as a principal debtor therein, but that at the said time, as between the State of Louisiana and the said private corporation and its stockholders, they were the primary and principal debtors, the State having made and emitted said bonds for their accommodation and the entire proceeds of the negotiation thereof having enured and been applied to their use, and that between them and the State the latter occupied towards them the relation of a surety or guarantor, and was entitled as against them to all the rights and remedies incident to such relation.

Complainant says that the State of Louisiana, while directly indebted to the holders thereof as a principal debtor upon said bonds and upon the bonds and securities subsequently issued in renewal or extension thereof, as hereinafter set forth, is not subject and cannot be made amenable to the jurisdiction of this court in respect of said bonds and securities as a defendant at the suit of any
47 holder thereof, but complainant says the said corporation and its stockholders are amenable to the jurisdiction of this court in this proceeding, and that the holders of said bonds and securities are entitled in equity to avail themselves of and enforce against said corporation and its stockholders, to the exoneration of the said State from indebtedness and liability on account of said bonds and securities, any and all liens, privileges, pledges, mort-

gages, or securities of whatever character existing in respect of said indebtedness or liability in favor of the State against said corporation and its stockholders.

3. Complainant says that by the 6th section of said act of April 19th, 1828, it was enacted that the obligations bearing privileged mortgage for the sum of three millions of dollars subscribed by the stockholders of the said Consolidated Association, "in order to guarantee the loan" of two million five hundred thousand dollars, shall be deposited in the offices of said institution "for safe keeping and as a guarantee" for the reimbursement of the principal and interest of the bonds given by the State, and, moreover, all the hypothecary obligations of whatever nature subscribed by individuals in favor of said consolidated association "shall serve as a special guarantee and security" for the reimbursement of said two million five hundred thousand dollars and the interest thereof, and shall for that purpose be deposited in the offices of said institution, "inasmuch as the said Consolidated Association is bound for the reimbursement of said bonds subscribed by the State at their respective instalments" (maturities), "and to pay the annual interest until the whole
48 amount of the principal is reimbursed."

By section 11 of said act it was provided that the securities offered by stockholders should be submitted to the examination of the secretary of state and of the attorney general, and by the 12th section that whenever the said officers of the State — that the securities offered by a stockholder were not sufficient it should be the duty of the directors to require additional securities from such stockholders or to reduce the number of shares to such an amount as the securities offered should be considered sufficient to guarantee; by the 14th section the duration of the corporate existence was extended to the 30th of June, 1843, and by the 17th and last section it was enacted that as soon as the president, directors, and company of the Consolidated Association should inform the Governor of the State that they accepted the said act it should become obligatory on said institution and have the same force and effect as the original charter.

Complainant says that upon the passage of said act of February 19th, 1828, the stock subscription was in accordance with its provisions increased to the amount of three million of dollars, and the said act was accepted by the stockholders as contemplated by the last session, and thereupon became a statutory contract between the State of Louisiana, the said corporation and its stockholders, and all creditors who accepted the bonds of the State to the order of and endorsed by said corporation issued under the terms of said act; that the obligations resulting from the bonds issued under said act, and the bonds and securities issued in renewal and extension
49 thereof, as hereinafter set forth, are continuing statutory obligations, and that the securities and guarantees in respect of said obligations stipulated and provided for by the terms of said act are continuing statutory securities and guarantees, and that it is the manifest purpose and intention of said act and the effect and operation it was designed to have that the special statutory — of the con-

tracts evidenced by the said bonds issued under said act, and the special statutory securities and guarantees provided by said act in respect of the contracts evidenced by said bonds, should be and remain in full force and effect, without regard to general statutes of prescription and limitation, enacted by the same law-making power, until the whole amount of said bonds and interest should be paid to the holders thereof and until the State of Louisiana was fully reimbursed by said private corporation and its stockholders for any expenditure or liability incurred by it on account of said bonds.

Complainant says that the bonds of the State of Louisiana issued in aid of said Consolidated Association under said act of February 19th, 1828, to the amount of two million five hundred thousand dollars, as aforesaid, were made payable one-third on the 30th of June, 1833, one-third on the 30th of June, 1838, and one-third on the 30th of June, 1843.

4. Complainant is informed and believes that the said bonds maturing on the 30th of June, 1833, were paid by said bank and extinguished, but complainant says, by an act of the General Assembly of the State of Louisiana of March 31, 1835, the
50 board of directors of said association were authorized, if in their judgment it was advisable, to postpone to June 30th, 1848, or any nearer period, the payment of said bonds of the State which were to become due on the 30th of June, 1838, and the 30th of June, 1843, and the Governor of the State was authorized to issue for that purpose other bonds of the State in renewal of said bonds maturing as aforesaid in 1838 and in 1843, which extension and renewal was for the convenience and accommodation of said corporation and its stockholders, who, under the terms of said act of February 19, 1828, were under the obligation to furnish the funds to meet and extinguish said bonds and the interest thereon as they became due, and thereby relieve the State from the liability incurred by it in respect of said bonds and interest for the benefit of said private corporation and its stockholders. By the said act of 1835 the corporate existence of said Consolidated Association, which had been extended by said act of 1828 to June 30th, 1843, was still further extended, and the said corporation was allowed two years after the 30th of June, 1848, or until June 30th, 1850, to liquidate and close its affairs.

5. Complainant further says that all of said bonds of the State of Louisiana issued in *and* of said Consolidated Association under said acts of 1827 and 1828, as aforesaid, which remained outstanding at the time of the passage of said act of 1835, were, as complainant is informed and believes, returned to the State, and other bonds, in conformity to the terms of said act of 1835, were delivered by
51 the State to the holders of said original bonds in exchange for said original bonds and in renewal thereof.

And complainant is advised and says that all of said securities and guarantees stipulated for and provided by said acts of 1827 and 1828 in favor of the State and the holders of said bonds issued under said acts of 1827 and 1828 were continued in full force and

effect in favor of the State and the holders of said bonds of renewal issued as aforesaid under said act of 1835.

6. Complainant further says that long prior to the maturity, on the 30th of June, 1848, and prior to the 17th of November, 1842, the said Consolidated Association—three-fifths of whose cash capital, obtained, in manner aforesaid, upon pledge of the public faith and credit of the State of Louisiana, had been distributed among the stockholders of the corporation in the form of loans for long terms of years upon the security of their stock subscriptions and stock mortgages—had become greatly embarrassed, unable to meet its current obligations and had failed as a banking corporation, and that on the said 17th day of November, 1842, a decree of forfeiture of charter was rendered against it, by a court of competent jurisdiction, in a proceeding instituted against it on behalf of the State, under the provisions of one act of the General Assembly of said State, of the 14th of March, 1842, No. 98 of the acts of that year, entitled "An act to provide for the liquidation of banks." But, complainant is advised and says, by the 28th section of said act it was expressly enacted as to banks in which the State was a stockholder, or for which it had issued bonds, or for which it was in any manner liable—within
52 which category was the said consolidated association—that if a decree of forfeiture should be pronounced against any of said banks "the corporation shall not be deemed to be dissolved, but shall retain its corporate powers and privileges," with certain exceptions mentioned in said section, not material to be stated here; and the said act required the Governor of the State to be notified of the rendition of such decree of forfeiture; and thereupon it was, by the 9th section of said act, made his duty to appoint six managers of such bank, by whom the affairs thereof should "thereafter be conducted in the corporate name." By virtue of said provisions, and of and by operation of other statutes hereinafter referred to, the corporate existence of said Consolidated Association has, notwithstanding said decree of forfeiture, been preserved and continued down to this time, and said corporation was still in existence when this proceeding was instituted for a judicial and final liquidation of its affairs and to enforce the application of its assets to the payment of its debts.

6. Subsequent to said decree of forfeiture of the 17th of November, 1842, the General Assembly of the State of Louisiana passed "An act to facilitate the liquidation of the property banks chartered by the State," approved April 5th, 1843, by which stockholders of such banks were authorized to pay their subscriptions for stock on such banks in bonds of the State issued for their account, and the State assumed the possession and management of the assets through managers appointed for the purpose, whose powers were the
53 same, with certain exceptions, as those exercised by the president and directors before the liquidation, and the bonds of the State issued for account of said banks were authorized to be extended for a term of fifteen years.

Complainant says that prior to the 30th of June, 1848, the date

of the maturity of the bonds of renewal issued for account of said Consolidated Association under said act of March 21, 1835, the stockholders of said corporation being under obligation, as aforesaid, to the State and to the holders of said bonds of the State issued for account of said corporation, attended by the guarantees and securities aforesaid, and it being impracticable to provide funds from the assets of said corporation, including in the said stock obligations and mortgages, in time to meet said bonds and the interest coupons thereon as they became due, except by immediate enforcement of said stock obligations and mortgages to an extent which would greatly inconvenience and embarrass said stockholders, the General Assembly of the State of Louisiana passed an act, approved April 6th, 1847, "to protect the State against loss on account of its liabilities for bonds issued for the use of the property banks," by which the stockholders were permitted to participate with the managers appointed on behalf of the State in the administration of the assets and affairs of the bank in liquidation, and by the 4th section of which the managers and directors were "authorized to extend, by endorsement or otherwise, the bonds of the State in favor of said bank for six, nine, twelve, fifteen, and eighteen years, with the proviso that the stockholders should be at liberty to discharge
54 those bonds sooner, and authority was granted to continue the liquidation of the corporation until the maturity and payment of the bonds thus extended."

By the 5th section of said act it was made the duty of said managers and directors, within thirty days from their being qualified and entering upon the duties of their office, to set apart a sufficient amount of the assets of the Consolidated Association to pay the interest then due upon the bonds of the State issued for account of said bank, and to adopt means to secure the punctual payment of the same for the future.

By the 7th section of said act the stockholders of any of the property banks were authorized, through their managers and directors or otherwise, to negotiate and contract with the bondholders to procure the release of the State.

By the 6th section of said act it was made the duty of the managers and directors to require such annual or periodical payment from the stockholders, "independently of their stock obligations," as would "accumulate a fund sufficient to meet faithfully and regularly the obligations of the State" for account of said bank: Provided, That the amounts to be required from said stockholders should be divided into equal instalments running from one to seventeen years.

By an act supplemental to said act No. 100 of 1847, "to protect the State from loss on account of its liabilities for bonds for the use of the property banks," being act No. 216, approved May 4th,
55 1847, it was, by the 2d section thereof, enacted that, with certain qualifications stated in said section, bonds of the State issued for account of said bank, as well as all matured obligations of said bank, should be received from stockholders in payment of their annual instalments, and by the 3d section that the stock-

holders should be authorized to discharge their whole debt in such bonds of the State upon certain terms stated in said section, but complainant is informed and believes that none of the stockholders availed themselves of the permission accorded in said third section.

Complainant says further that after the passage of said acts of April 6th and May 4th, 1847, to wit, on the 5th of June, 1847, a committee of the board of managers and directors of said Consolidated Association made a report to said board, in which it stated that it was of opinion "that in proceeding to the liquidation the object must be to secure the payment of the obligations of the State and of the interest thereon," and to that end recommended that the accounts of the stockholders should be settled, and that the payment of the balance of each account, with seven per cent. per annum interest, in equal annual instalments, extend from one to eighteen years, without any further delay, and "that a contribution of about five hundred thousand dollars must be paid by the stockholders in seventeen years, in equal instalments, without interest, and that the speedy and faithful execution of those measures would "probably determine the holders of the obligations of the State either to postpone the payment of those obligations according to the law
56 or to wait for the payment thereof without passing any contract to that effect," and the said committee reported certain resolutions, which were adopted by the board of managers and directors on the said 5th of June, 1847, and which were as follows, viz:

1st. Resolved, That according to the legislative act approved the 6th of April, 1847, a contribution of six dollars per share shall be paid by each stockholder of the Consolidated Association on the 1st of June, 1849, and on the first of June of each of the sixteen ensuing years.

2. Resolved, That the sums now due on stock loans, including the interest due, shall be divided into eighteen equal annual instalments, the payment of the first to take place at furthest on the first of June, 1848, and the payment of the others at furthest on the first of June of each of the seventeen ensuing years; that the interest on said payments, instead of being in the form of a discount of 6½ per cent., payable in advance, shall be added to the portion of the capital due each year at the rate of 7 per cent., and shall be included in each of the eighteen bonds or obligations to be subscribed by the stockholders.

3. Resolved, That as soon as the accounts of the stockholders shall have been prepared the said stockholders shall be invited by the cashier to come, within the shortest delay, in order to subscribe all the necessary bonds and acts to entitle them to the above-granted delays.

4. Resolved, That the cashier be requested to annex to the letter, by him to be addressed to the stockholders, copies of the last
57 laws, of the report, and of the present resolutions.

In pursuance of the last resolution a letter was addressed by the cashier to the stockholders of the following tenor:

"CONSOLIDATED ASSOCIATION OF THE
PLANTERS OF LOUISIANA,
"NEW ORLEANS, 10*th of June*, 1847.

"SIR: I am instructed to call your attention to the annexed report and resolutions adopted by the managers and directors of the bank at their meeting of the 5th inst. I also transmit to you a copy of two acts concerning the property banks, approved on the 6th of April and the 4th of May, 1847, and your account with this institution, showing the amount of your indebtedness, in capital and interest, as one of the stockholders.

"With a view to facilitate the payment of the sums due to the bank the board have resolved to permit the stockholders to divide the total amount due by them into eighteen instalments, which, with the interest and contributions acquired according to law, will, as you perceive, hardly exceed the yearly instalments and interest which, up to this day, you have been called upon to pay.

"The board of administration are in hopes that the facilities granted to the stockholders of the consolidated association by the above-mentioned resolutions will induce them to come forward without delay and pass the act that will be necessary before they can take the benefit of said facilities.

"Respectfully, your ob't serv't,
"(Signed) S. MILTENBERGER, *Cashier.*"

58 Complainant avers upon information that shortly after said 10th of June, 1847, the stockholders of said corporation, with but few exceptions, availed themselves of the facilities thus accorded to them, and to that end signed the necessary act referred to in said resolutions, the terms and stipulations of which material to be stated will be hereinafter set forth.

Complainant says that subsequent to said 10th of June, 1847, the said bonds of renewal issued as aforesaid under said act of 1835 were, under the authorization of said act of April 6th, 1847, extended by endorsement and made payable in fifths in the years 1854, 1857, 1860, 1863, and 1866, as will more fully appear by certain of said bonds annexed to the original bill of complaint herein for greater certainty and made part thereof as Exhibit A.

Complainant avers that after acceptance by said stockholders of the facilities and delays accorded them as aforesaid under authority of said act of April 6th, 1847, and the signing of the said act required to entitle them to avail themselves of said delays and facilities, some of the instalments thereby stipulated to be paid were paid by some of said stockholders, but many of said instalments were not paid by many of them when due and have not been paid at any time since, and some of said stockholders pretend not only that they are discharged from all liability for such unpaid instalments by the prescription of five or ten years, but that the said act of April 6th, 1847, and the contract and agreement entered into by them as aforesaid to pay said instalments constitutes a full and final settlement

59 between them and the State of Louisiana by contract, whereby they are discharged from all liability on account of said original stock subscriptions and mortgages made or assumed by them other than the liability to pay said instalments, from which latter liability they claim to be discharged by prescription as aforesaid, the said stockholders pretending that the said contract to pay said instalments entered into by them as aforesaid was intended by the State of Louisiana, or is entitled to have effect against the State of Louisiana and the bondholders aforesaid, as a novation of said original subscriptions for three millions of dollars of the stock of said corporation and of the mortgages executed to secure the same, and to operate in favor of said stockholders a release from all liability to the State or to the bondholders on account of said stock subscriptions and mortgages, whereas complainant charges the truth to be that the said act of April the 6th, 1847, and the contracts entered into thereunder by said stockholders and the transactions subsequently had under said contracts were not intended or understood at the time, either by the State, the corporation, its stockholders, or the bondholders, to import or imply in any way any such novation or release of the liability of the said stockholders under said stock subscriptions and mortgages. Complainant charges the truth to be that the State was constrained to consent to the further extension of the said bonds of renewal issued in and of said corporation under said act of 1835 solely by the inability and failure of the corporation and its stockholders to provide funds, as they
60 were under obligation to do, to meet said bonds and all interest thereon by the 30th of June, 1848, and so relieve the State from its liability on their account; that the extension of time to said stockholders of from one to seventeen years was solely for their convenience and accommodation, a concession made to them by the liberality of the State and of the bondholders, without consideration or inducement other than to give them ample time to pay their own debts, by so doing release from liability therefor the State whose relation to them in respect of the debts evidenced by said bonds was that of a surety for their accommodation; that the truth of the matter is that at the time of the passage of said act of April 6th, 1847, and of the adoption of said resolution by the board of directors and managers of said corporation on the 5th of June, 1847, calling upon said stockholders for a contribution of about five hundred thousand dollars, and of the entering into said contracts by said stockholders to entitle them to the facilities and delays accorded to them by said act and said resolution, the actual existing liability of the State on account of bonds issued for the accommodation of said corporation and its stockholders, as shown by the statement made to the board of currency on the 2nd of January, 1845, by S. Miltenberger, cashier of said Consolidated Association, and by the board of currency, submitted to the Legislature which passed said act of April 6th, 1847, and published at page 47 of the senate journal of that year, was as follows:

61	Amount of bonds of the State issued in favor of the Consolidated Association and then outstanding	$1,643,000 00
	Of which $552,000 were due on the 30th of June, 1843, and $1,091 were to fall due on the 30th of June, 1848.	
	Amount of coupons of interest on State bonds then outstanding	218,325 00
		$1,861,325 00

Showing that the liability of the State on account of bonds issued for the use of said corporation, at the time of the passage of the act of April 6, 1847, the purpose of which is declared in the title to be to protect the State from loss on account of its liabilities on bonds issued for the use of the property banks amounted to over one million eight hundred thousand dollars, or to nearly two million of dollars, and showing that the pretense of said stockholders that this purpose was intended to be accomplished by a compromise and settlement between the State and the stockholders under the provisions of said act, whereby the State would release said stockholders from their liability on account of stock subscriptions and stock mortgages to the amount of three millions of dollars, made and granted for the express purpose of guaranteeing the State such loss, in consideration of the bondholders obligating themselves in another form to pay about five hundred thousand dollars in a period of eighteen years, is utterly untenable and absurd on the face of it.

And, further, as to said pretense of said stockholders, complainant charges that, at the time of the passage of said act of April
62 6th, 1847, the said stockholders were not only absolutely liable to be called upon to contribute to the extent of five hundred dollars for every share of stock subscribed for or assumed by them towards the payment of the debts of said corporation, which liability was secured by the stock mortgages executed in conformity to the requirements of said act of 1827 and 1828, constituted by said acts a special trust fund, of which the State and the bondholders were the *cestui que trust*, but the said stockholders were at the same time indebted to said corporation for the larger portion of its cash capital of two million and a half dollars raised, as before stated, upon the pledge of the public faith and credit of the State of Louisiana, distributed among and paid out to said stockholders in the form of stock loans, the said stockholders being entitled under said acts of 1827 and 1828 to borrow one million five hundred thousand dollars out of the two million five hundred thousand dollars of the borrowed cash capital of said bank.

Upon the face of said act of April 6th, 1847, it is manifest, as it is therein stated explicitly in express terms, that the calls to be made upon the stockholders under the 6th section of the act were to be made "independently of their stock obligations," and complainant therefore charges that said pretense that the stockholders who have paid said calls or claim to be, on the plea of prescription, exempt

from liability to pay them are thereby discharged entirely from their stock obligations is in direct conflict with the said terms of the statute, and is, therefore, altogether untenable.

63 And complainant further says that the said pretense of said stockholders that their liability upon said stock obligations and mortgages was extinguished by novation by effect of a new contract alleged to have been entered into between the State and the stockholders by and through said statute of April 6th, 1847, and agreements entered into and acts performed thereunder is altogether irreconcilable with the explicit terms and express stipulations of said authentic acts executed and signed as aforesaid by all of said stockholders who availed themselves of the facilities and delays accorded to them by said act of April 6th, 1847, in all of which acts the original stock obligations and mortgages granted to secure them are expressly mentioned — referred to for certainty and made part of said authentic acts executed under said statute of April 6th, 1847, and all of which last-mentioned acts embrace an express reservation of all rights resulting from said original stock obligations and mortgages, and all embody an explicit statement that they are intended only to assure to the stockholders the delays of payment therein specified without operating any novation whatever, and the said statement made in the beginning of all of said acts is reiterated towards the close thereof in the form of an express stipulation that nothing in the said acts should be considered as in anywise affecting the rights, privileges, actions, and mortgages of the said Consolidated Association resulting in its favor from the acts evidencing the original stock obligations and mortgages, which are to remain in all their original force and effect, nothing therein being derogated from

64 or changed by said last executed acts, except as to what is therein stipulated with regard to the delays granted and the mode of sale in case of seizure.

Furthermore, complainant says that much the larger number, if not all, of the parties made defendants hereto as stockholders of said corporation have become such by voluntary assumption of said stock obligations and mortgages at times subsequent to said pretended extinction of liability on said stock obligations and mortgages by novation as aforesaid, and that nevertheless, in the authentic acts by which such assumption of liability has been made and by which properties affected by said stock mortgages have been acquired, the said parties have recognized the said stock obligations and mortgages as existing obligations and liens, and that the assumption of said obligations and recognition of said mortgages in favor of said Consolidated Association have constituted a material element of the consideration and price for which said properties were acquired by said parties, and that it is contrary to equity and good conscience for said parties now to deny the existence of said stock obligations and mortgages so as aforesaid voluntarily assumed and recognized by them as part of the consideration for which said properties were acquired by them.

7. Complainant further says that, notwithstanding the liberal facilities and long delays accorded to the stockholders of said cor-

poration by said act of April 6th, 1847, the funds necessary to meet and discharge the liabilities of the State incurred as aforesaid
65 on account of said corporation were not provided as contemplated by said act, except to a partial and limited extent, within the time limited by the act, and thus in the year 1866, by which time the said bonds and all interest thereon were to have been met and discharged in full under the terms of said act of April 6th, 1847, the General Assembly of Louisiana, for the further convenience and accommodation of said stockholders, passed an act, approved February 26th, 1866, authorizing the managers and directors of said Consolidated Association to negotiate the postponement of the payment of the bonds and interest coupons issued by the State as aforesaid for account of said corporation for a period of ten years from June 30th, 1866, or until June 30th, 1876, reserving to the stockholders the right to extinguish them at an earlier period, and continuing the liquidation of the corporation until the maturity and payment of said bonds, and thus said postponed — was negotiated as contemplated by said act.

8. Complainant says that he is the holder and owner of three certain bonds of the State of Louisiana, issued under the acts aforesaid, payable to the order of said Consolidated Association and by them endorsed, each for the sum of one thousand dollars and numbered 1034, 382, and 1199, and under the act of 1847, by which the managers and directors of said Consolidated Association were empowered to extend the payment of said bonds issued under said acts of 1827, 1828, and 1835 for periods of six, nine, twelve, fifteen, and eighteen years, and of which they availed themselves by paying one-fifth of said bonds in 1854 and every three years thereafter,
66 with the exception of 1866, at which time they failed to fulfill their obligations. Complainant says that on the 30th of June, 1866, there remained a balance due on the said bonds of the State of one-fifth of their face value, being the last payment to be made under the extension granted by the act of 1847; that under the authorization granted by said act of February 26th, 1866, the managers and directors of said Consolidated Association, through their agent, A. Schreiber, executed and delivered bonds which were annexed to and made part of said State bonds, and were with them identified and numbered; that to said bonds coupons were attached, and the balance of one-fifth remaining due under the extension of the act of 1847 was made payable in instalments on the 30th of June, 1870, 1872, 1874, and 1876, with coupons of interest thereon, payable semi-annually, in accordance with the provisions of said acts of 1827 and 1828, all of which will more fully appear by reference to the bonds, annexed to the original bill of complaint herein as Exhibit B.

9. Complainant says that said corporation paid some of the instalments as they became due under said extension of the act of 1866, and that it has failed and refused to pay the other instalments and the interest thereon, long since due, on the said bonds held by complainant, and that there is now due and owing to complainant, and for which he has made demand without avail, the sum of six

hundred and ninety-two dollars and fifty cents for the remaining instalment and interest, with interest thereon, as will more fully appear by reference to said bonds issued by the State and by
67 the managers and directors of said Consolidated Association and annexed to the original bill of complaint herein as Exhibits A and B.

10. Complainant says that the corporate capital of said Consolidated Association consisted originally altogether of the personal obligations of the stockholders thereof to the amount of three million of dollars, acknowledged to be due by them to the corporation and the payment of it secured by special mortgages on real estate, no part of which was required to be paid in except eventually to pay the corporate debts, should it be required for that purpose, the said stock obligations and mortgages being specially hypothecated and pledged to guarantee the reimbursement of the money borrowed upon the faith of the State to constitute the cash capital with which the corporate business was to be carried on, and complainant says that whatever other assets the said corporation now owns in addition to the capital represented by such stock, obligations, and mortgages, has been realized thereform, and that all of said assets were, by the laws of the corporate existence of said association aforesaid, constituted a specially designated trust fund for the security and payment of the corporate obligations of said association and especially of its obligations of the character of those held by complainant and other holders of said bonds of the State — of said corporation, and that the holders of said bonds have, under said laws, a special statutory lien and privilege on said stock obligations and mortgages to secure and guarantee the payment to them of the corporate debts evidenced thereby and are entitled in equity to enforce the collection
68 thereof for that purpose, as the *cestues que trust* of the special trust fund established aforesaid by said laws, and are entitled to proceed originally by suit in equity to subject said trust fund to the payment of their said debts without being required before so doing to recover judgments at law upon their said bonds.

10. Complainant says that, under the aforesaid laws and acts amendatory thereof, the affairs of said association connected with the liquidation thereof were conducted and carried on in the corporate name by six managers appointed in the manner provided by said acts, from the time of the judgment of forfeiture of charter aforesaid of the 17th of November, 1842, until the year 1847, when, under the said act No. 100, of April 6th of that year, the affairs of said corporation, in connection with its liquidation, were entrusted to the management and administration of a board of managers and directors, consisting of three managers appointed by and on behalf of the State and of three directors, stockholders of said association, elected by and on behalf of the stockholders thereof, and that under said act No. 100 of 1847 and acts amendatory thereof and under act No. 38 of 1866, the said association continued to be fully organized and to maintain its corporate existence for purposes of liquidation and the said board of managers and directors continued in the administration of the affairs of said corporation until on or about

the 17th of June, 1876, when the individuals constituting the board of managers and directors then in office abandoned their trust and the affairs of said corporation became, for the time, derelict,
69 and that thereupon and shortly thereafter, to wit, on the 7th of September, 1876, when a bill in equity was filed in this court by a holder of certain of said bonds of the State and of said association, for himself and on behalf of all other holders of similar securities, praying for the appointment by the court of receivers to take charge of the property and assets of said association and for a judicial liquidation and settlement of the affairs of said derelict corporation, and that thereupon, after due proceedings, receivers were appointed by this court, through whom it took possession of and judicially sequestered all the property and assets of said corporation for the benefit of the creditors thereof, which suit or proceeding is entitled Max Grebner *vs.* B. F. Flanders and others and is numbered 7940 on the docket of the court.

12. Complainant further says that the judicial liquidation and settlement of the affairs of the said corporation was being proceeded with in said suit, under the control and supervision of this court in the exercise of its equitable jurisdiction, vested in it by the Constitution and laws of the United States, when on the 30th of March, 1878, the Legislature of the State of Louisiana passed an act, No. 20 of the extra session of that year, "to provide for the further liquidation of the Consolidated Association of the Planters of Louisiana," etc., etc., a copy of which act was officially transmitted by the Governor of the State to this court, and which act, in its first section, was embodied the extraordinary request addressed to the
70 judges of this court, not in the form of a bill, petition, or pleading in any cause, but directly in the form of a law from the Legislature of the State of Louisiana to the "honorable judges of the circuit court of the United States for this district and circuit," that the said judges should rescind a decretal order regularly made in the exercise of their lawful jurisdiction in a cause depending before them between an alien and citizens of the State of Louisiana—that is to say, that they should rescind the order of said court appointing receivers in said suit of Max Grebner *vs.* B. F. Flanders and others, No. 7940 of the docket of the court, and complainant says, upon information and belief, that the passage of said act, embodying said extraordinary attempt on the part of the Legislature of a State to control or influence judges of a Federal court in the discharge of judicial functions incumbent upon them under the Constitution and laws of the United States, was induced and procured by the representations and at the instance of said stockholders of said corporation with a view to avoid the judicial enforcement against them at the suit of creditors of said corporation of the stock obligations and mortgages aforesaid, and upon the pretext that it would be conducive to the security of the State of Louisiana against loss on account of its liability on its said bonds issued as aforesaid on account and for the accommodation of said corporation and its stockholders, that the said order appointing receivers should be rescinded and the control and possession of its

assets and affairs should be restored to the president and
71 directors of said corporation as organized under act No. 113 of 1853, subsequent to the rendition of said decree for the appointment of receivers in said suit of Max Grebner *vs.* B. F. Flanders, No. 7940 of the docket.

Complainant says further that prior to the passage of said act No. 20 of the extra session of 1878 the State of Louisiana had in the year 1874 passed an act known as the funding act, whereby the said State declined and refused to make any provision in the future for the payment of principal or interest of bonds of the State then outstanding, as were acknowledged or should be held by the supreme court of the State to be valid obligations of the State, otherwise than by giving in exchange other bonds of the State known as consolidated bonds of the State of 1874, at the rate of sixty cents on the dollar of new bonds for one dollar of bonds before outstanding; and it was by the 3d section of said act No. 20 of 1878 enacted that in case it should be decided by the supreme court of the State that the bonds issued in aid of said Consolidated Association were legal and valid obligations of the State and properly fundable under said funding act of 1874, the board of liquidation, upon receiving the same in exchange for bonds issued under said funding act, should, instead of cancelling and destroying them, as provided in case of other bonds, preserve the same after stamping or printing upon them such statement as to show that the obligation of the State thereon has been extinguished, turn them over to the auditor of public accounts to be preserved as evidence of the obligation of
the corporation to the State; and by the 4th section of said
72 act it was made the duty of the auditor to open upon his books an account with the Consolidated Association of the Planters of Louisiana, wherein he shall charge said association with the amount of all the bonds issued under said funding act in exchange for bonds issued by the State in aid of said association, and shall credit the association with the amount of all consolidated bonds (of 1874) surrendered by it to the State for cancellation and with all moneys paid in by it to meet interest as it shall accrue.

By the 5th section of said act it was made the duty of the president and directors, as soon as they should be restored to possession, to convert into cash all the assets of the association except the stock mortgages, in the most speedy and effectual manner, and as fast as funds should be realized from said assets, over and above necessary expenses of liquidation, to invest the same in State consols of 1874.

By the 6th section of said act it was made the duty of the president and directors to make or cause to be made an investigation of the mortgages given to secure the subscriptions to the capital stock of said association, and to ascertain therefrom, 1st, the number of shares of stock outstanding and the amount due thereon; 2d, the respective owners of said stock or of the property affected by the stock mortgage; 3d, the value of such properties; and it was made the duty of the president and directors to form an estimate of the amount which it would be necessary to provide to pay semi-annu-

ally interest on amount of State consols of 1874 issued in ex-
73 change for bonds in aid of the Consolidated Association which the State would be called upon to pay during the current — and also of the amount which would be necessary to purchase and surrender to the State in each year one-tenth of the total amount of State consols charged against the association as aforesaid at the date of payment; and upon those dates the president and directors were required to levy and call in an assessment upon each share of stock and to require such periodical payment thereof as would be sufficient and timely to pay the interest of the current year and to purchase an amount of State consols in conformity to the estimate to be made as aforesaid.

By the 13th section of said act it was provided that the liquidation of the corporation should continue until the payment of the obligations of the State incurred on account thereof, "reserving the right to the State, in case of failure on the part of the corporation to provide for payment of interest and extinction of part of the principal of the bonds," as contemplated by the act, to make such other and further regulations for the liquidation as might thereafter be deemed proper.

And by the 15th section of said act it was enacted that no delay should be granted to any stockholder under the provisions of the act "until the stockholder desiring to avail himself of it shall have by authentic act acknowledged all his obligations to the State," and that nothing in the act should be held in any way, either directly or indirectly, to constitute a contract so as to deprive the State of the right by future laws to create such additional machinery or remedies *and* should be deemed necessary.

13. Complainant further says that thereafter, on the 20th of
74 March, 1874, by consent of the complainant in said suit of Grebner *vs.* Flanders and of all parties thereto, except Huntington and Champlin, who had been admitted to become parties as holders of certain of said bonds of the State and of said association, a decree was entered in said cause by which the appointment of receivers therein was vacated and the assets of said corporation in their hands ordered to be delivered to the president and directors of said association, as appointed and organized under said act No. 20 of 1878, and that thereupon the said Huntington and Champlin took an appeal from said decree, which operated as supersedeas, but which they afterwards abandoned, and said decree was executed and the assets of the corporation delivered accordingly to said president and directors on the fifth of June, 1880.

Complainant says that throughout said proceeding of Grebner *vs.* Flanders the attempt to subject the assets of said corporation judicially to the payment of its debts, and to that end to enforce a liquidation and settlement of its affairs under the jurisdiction and authority of this honorable court, was strenuously resisted at every step, in the name of said corporation, through the said president and directors, and of the State of Louisiana, but really on behalf and in the interest of said stockholders, with a view to evade and avoid the enforcement against them of the said stock obligations and mort-

gages by decree and process of the court, and that this was done upon the pretense, among others, that it was not to the interest of the State that the assets of said corporation, including the said stock
75 obligations and mortgages, should be judicially subjected in said proceeding to the satisfaction of the debts of said corporation for which the State was liable as aforesaid, but that assets would be more effectually applied to that purpose and the State more effectually relieved from the said liability by the possession and administration of said assets being restored to the president and directors of said corporation, to be administered upon by them under the provisions of said act No. 20 of 1878, whereas complainant charges the truth to be that the said stockholders did not intend to and have not availed themselves of the terms of said act by acknowledging by authentic act their obligations to the State, as required by the 15th section of the act, but that, since the passage of said act and the delivery of the assets of said corporation for administration to said president and directors, all of said stockholders, as complainant is informed and believes, have denied and sought to repudiate any and all liability either to the State or the bondholders for or on account of said stock obligations and mortgages; and complainant says that this has been and is still done by all or some of said stockholders, not only upon the pretense before stated, that all of said stock obligations and mortgages have long since been extinguished by novation and payment or prescription or accord and satisfaction under the terms of said act of April 6th, 1847, in the manner hereinbefore stated, but upon the further pretense that in some way the great length of time through which the liquidation of the affairs of said corporation had been protracted and the heavy charges against its assets which have
76 resulted therefrom, and especially the charges made there against and allowed by this court in the said proceeding of Max Grebner *vs.* B. F. Flanders and others, have operated a release and discharge of said stockholders for or on account of said stock obligations and mortgages, either to the corporation, the State, or the bondholders, whereas complainant charges that in nowise can said delays or the allowance of said charges be entitled to any such operation or effect in law or equity; that the truth is, as has been hereinbefore stated, that the said delays were in every instance granted for the convenience and accommodation of said stockholders and at their instance, and that the expense that has been incident to the liquidation is mainly attributable to the long period during which it has been protracted for the benefit and convenience of said stockholders, and that the charges made and allowed by this court in the said proceeding of Max Grebner *vs.* B. F. Flanders and others were largely occasioned by the strenuous resistance made therein as aforesaid on behalf of said stockholders and in their interest to said suit to subject the assets of said corporation to the satisfaction of its debts, and that the amounts allowed by the court were such as were deemed by the court, in its judgment, proper to be allowed under the circumstances, and that the decrees of this court in that particular are not subject to revision elsewhere, except by the Supreme Court of the United States, to which no appeal from said decrees was ever taken;

and, further, complainant says that if said allowances were excessive,
77 which is not admitted, but is denied, neither the State nor the bondholders are to be in anywise prejudiced thereby, under the maxim of the law that the act of the court shall prejudice no one—*actus curiæ nemenim gravabit.* Complainant says that had the stockholders accepted the benefit of said act No. 20 of 1878, as provided by the 15th section thereof, they would have been entitled to the benefit of a reduction of forty per cent. of the capital of the corporate indebtedness represented by so many of the said bonds of the State issued in aid of said corporation as should be exchanged under said act for Louisiana consols of 1874, for which a very large amount of said bonds in aid of said corporation have been actually exchanged, the said bonds issued in aid of said corporation being now held by the State under the 4th section of said act of 1878 "as evidence of the obligation of the corporation to the State;" but complainant says that the said stockholders were not satisfied to accept a reduction of forty per cent. of the greater portion of said corporate indebtedness for which they were and are liable as aforesaid now, upon the false and untenable pretenses aforesaid, deny and repudiate all liability on account of said stock obligations and mortgages for any portion whatever of said indebtedness, either to said corporation, to the State, or to the bondholders, and claim the right to hold and enjoy the properties affected by said stock mortgages free and clear of all incumbrance on account thereof, which claims, complainant says, are without warrant in law and contrary to equity and good conscience, the said stockholders and
78 the said properties remaining liable to the said corporation, to the State, and to the bondholders to the full amount of said stock subscriptions, subject only to such credits as they may be entitled to for any sums heretofore actually paid on account of such stock subscriptions.

Complainant says that the said president and directors of said association, as organized under said act No. 20 of 1878, after having obtained possession and administration of the assets and affairs of said corporation as aforesaid, made the estimates required by said act and an assessment against the stockholders of certain sums to be periodically paid in accordance with the terms of said act, but complainant says that none of the stockholders have voluntarily paid said assessments nor has the said board collected any of them by process of law, and complainant says that the liquidation of the affairs of said corporation was further protracted under the administration of said board, without effectual relief being afforded to the creditor of said corporation, until the 5th of July, 1882, when act No. 78 of that year was passed by the Legislature of the State, by the preamble of which it is declared as follows:

Whereas it has been decided by the supreme court of Louisiana that the bonds issued by the State in aid of the Consolidated Association of the Planters of Louisiana are valid obligations of the State and entitled to be exchanged for consolidated bonds of the State under the funding act of 1874; and

Whereas very nearly all of said bonds have been actually funded

in consolidated bonds of this State under the provisions of
79 said funding act of 1874; and

Whereas suits have been brought against any stockholders of said association who have combined to resist the same; and

Whereas many stockholders would prefer settling at once their share of indebtedness based upon the actual condition of said association, and nothing more can fairly be demanded of them; and

Whereas the protracted liquidation for more than a quarter of a century and the very remote prospect of its termination and the very heavy expenses consequent thereon cause great damage to the State and to the importunate stockholders, practically taking their property out of commerce, and that it is to the evident advantage of all that the affairs of this association be speedily wound up, the State reimbursed its bonds and the properties released from this mortgage, and in the body of the act a mode was provided for the voluntary settlement of the obligations of such of the stockholders as might choose — avail themselves of the provisions of the act upon a fair and equitable basis and the release of their properties from the incumbrance of the stock mortgages; but complainant is informed and says that the assumption in the preamble of the act, that many of the stockholders would prefer to settle their share of the corporate indebtedness in that manner, was a mistaken one on the part of the Legislature which passed the act, and that none of the stockholders have availed themselves of the provisions of the act to make such voluntary settlement, but that all of them
80 refuse to make any settlement or to pay anything towards the satisfaction of the corporate debts of said association, either under said act No. 78 of 1882 or under said act No. 20 of 1878; and complainant says that the said president and directors of said association have utterly failed to accomplish anything effectual towards the final liquidation and settlement of the affairs of said corporation or the application of its assets, especially of the said stock obligations and mortgages constituting the main trust fund for the purpose, to the satisfaction of the corporate debts during all the time that they have had control of the administration of the affairs of said association, since the assets thereof were delivered to them as aforesaid upon the voluntary dismissal of said suit of Max Grebner *vs.* B. F. Flanders as aforesaid, and that there is no hope or prospect of said president and directors being able to accomplish in the future, should they be permitted to continue the administration of said corporation, anything effectual towards the relief of the corporate creditors; and complainant here reiterates and reaffirms all the averments of his original bill of complaint herein — regard to the said administration of said president and directors.

15, 16, 17, 18, 19. Complainant reiterates all the averments of his original bill contained in paragraphs 15, 16, 17, 18, and 19 thereof, without amendment or modification, except that he says that it was not and is not intended to be admitted thereby, but, on the contrary, he expressly denies that any of the matters or things men-
81 tioned in certain opinions of the supreme court of Louisiana therein set forth are in anywise sufficient or effective in law

to operate any release, extinguishment, or impairment of the said stock obligations and mortgages; but this complainant says that, for the reasons hereinbefore stated, the said stock obligations and mortgages are and remain in full force and effect against said stockholders and the properties mortgaged and in favor of said corporation of the State and of the bondholders, notwithstanding any and all of said matters and things in said opinions mentioned.

20. Complainant says that since the filing of his original bill of complaint herein he has been advised to amend his said bill and to make the stockholders of said corporation, as far as they are known to him, parties defendant to this suit; and he says, upon information and belief, that all the persons named in this his amended bill as defendants, other than the said corporation and the president and directors thereof, are stockholders of said corporation, or are in possession of properties subject to stock mortgages in favor of said corporation, and are liable to be held to account to the creditors of said corporation in this proceeding, and that complainant is entitled to a full discovery from said defendants in relation to said matters in answer to the interrogatories hereinafter propounded to them.

Complainant says that, to the best of his information and belief, the debts and liabilities of said corporation still outstanding and unsatisfied are very large; that the bonds of the State of Louisi-
82 ana issued in and of said Consolidated Association which have not been funded into State consols under the funding act of 1874, still outstanding and unsatisfied, amount to over $64,000; that the bonds known as consols, issued by the State of Louisiana in exchange for other bonds originally issued by the State in aid of the Consolidated Association, amounting to $419,942.00, said consols being chargeable to the association, amount to $251,965.20, and that the interest on said amount of consols from January 1, 1874, to December 31, 1883, paid in cash by the State and chargeable to said association, amounted, on the 31st of December, 1883, to $117,163.81, and that the total indebtedness of the said association on the said accounts on the 31 of December, 1883, amounted to $433,207.00.

Complainant says that the assets of said association other than said stock obligations and stock mortgages are of comparatively small value and altogether insufficient to pay the debts of said corporation, and that in order to bring into court an adequate fund to satisfy said indebtedness it will be necessary to enforce in this proceeding the collection of so much of the sums due on said stock obligations and stock mortgages as may be found necessary for that purpose to the full extent and amount of five hundred dollars on each and every share of said stock, allowing credit against said amount of five hundred dollars per share for any sum or sums heretofore actually paid into said corporation on any of said shares.

To the end, therefore, that said defendants may, if they can, show why your orator and the other creditors of said Consolidated
83 Association of the Planters of Louisiana, on whose behalf, as well as that of your orator this suit is brought, should not have the relief hereby prayed for, and may, upon their several and respective oaths and to the best of their several and respective

knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer—that is to say:

1st interrogatory. Whether you have at any time owned or assumed to pay any share or shares of the capital-stock subscription of the Consolidated Association of the Planters of Louisiana; and, if so, how many of such shares have you owned or assumed to pay, and when did you acquire or assume to pay, and before what notary was the act passed by which you acquired or assumed to pay said shares. Annex a copy of such act or acts to your answer.

2nd interrogatory. Whether you have ever at any time been indebted to said Consolidated Association in any sum or sums for any loan or loans of money made to you by said Consolidated Association on any mortgage or mortgages of real estate, or have you at any time assumed or become liable to pay any such loan or loans made to others than yourself? And, if you say — have, state when and how and to what extent you became so indebted, and state before what notary or notaries the acts were passed evidencing such indebtedness, and give a full description of the property or properties mortgaged to secure such indebtedness, or annex copies of all notarial acts evidencing such indebtedness and mortgage to
84 your answer.

3d interrogatory. Whether you have at any time owned or possessed any property or properities or been interested in any property or properties mortgaged to said Consolidated Association to secure the subscription to any share or shares of the capital stock thereof or any indebtedness of any character to said association; and, if you say you have, state when and how you became owner or possessor thereof; and, if you became owner or possessor by purchase or otherwise than by inheritance, state how and when and before what notary or notaries the act or acts was or were passed under which you came into ownership or possession of such property or properties, with a full description thereof, or annex a copy or copies of such notarial act or acts to your answer; and if you say you became owner or possessor of any such property or properties by inheritance or under any last will or testament, state whether you became owner or possessor under a will or by inheritance as heir-at-law, and if by will state by whom such will was made and by whom and in what court it was probated, and if by inheritance as heir-at-law state of whom you inherited such property and in what court the succession from which you acquired it was opened and administered upon and whether you accepted such succession generally or with benefit of inventory, and if any other person or persons are interested with you in the ownership of any such properties, however acquired by you, state who such persons are, where they reside, and what is the extent and character of their interest
85 or share in such property or properties.

And your orator prays that an account may be taken, under the direction and decree of this honorable court, of all the debts and liabilities of said Consolidated Association of the Planters

of Louisiana and of all the assets thereof, and that the court will decree that the said stockholders of said association and persons who have assumed liability for subscriptions to the capital stock of said ssociation are personally liable for the debts of said association to the extent and amount of five hundred dollars on every share of stock subscribed for or assumed by them, respectively, subject to a credit against said sum of five hundred dollars per share of any sum or sums heretofore actually paid into said corporation on any of said shares, and that all properties mortgaged to said corporation to secure subscriptions to the stock thereof or the assumption of liability for such subscription or to secure any monied indebtedness to said corporation of any character are and remain liable to be seized and sold under said mortgages for the satisfaction thereof; that it be referred to the master in charge in the cause to take and state an account—

1. Of all the property and assets and of all the debts and liabilities of said corporation.

2. To ascertain and state the names, citizenship, or alienage and residences of all persons and bodies politic claiming to be creditors, with the amount of their respective claims, their character, and of the proofs submitted to the master in support thereof.

3. To ascertain and state the names and residences of all
86 persons appearing to be liable to said corporation and its creditors on account of subscriptions to the capital stock of said corporation or assumption of liability therefor, with the number of shares, respectively, for which said persons appear to be liable, and what sum or sums, if any, appear to have been heretofore paid into said corporation on any of said shares.

3. To take and state an account of all indebtedness to said corporation on other accounts than subscriptions to the capital stock thereof or assumption of liability therefor, with names and residences of all debtors and amounts due by them, respectively.

4. To make an inventory and appraisement of all properties mortgaged to said corporation to secure subscriptions to or assumptions of the shares of capital stock of said corporation, with number of shares so secured in each instance, and to report to the court his opinion as to the sufficiency or insufficiency of the mortgage security in each instance, and to state the amount of stock loans or other loans due to said corporation and secured by mortgage of the aforesaid properties, with names of debtors and amounts so secured, respectively.

5. To inquire into and ascertain the amount necessary to be raised from enforcement of stock subscriptions and mortgages to meet and satisfy in full, with the avails of the other assets of the corporation, all of the debts due by it to its creditors, in principal and interest, after payment of all costs and expenses of liquidation and the amount
per share which it will be necessary to collect from said de-
87 fendants hereinbefore named as stockholders of said corporation for that purpose.

Your orator prays that the orders for injunction and appointment of receivers heretofore granted herein be maintained and perpetuated

until the final liquidation and settlement of the affairs of said corporation and the payment of all its debts in so far as the application of its assets to that end will suffice, and that the court will order and decree that all of said assets, except the stock obligations and stock loans and mortgages, be sold with as little delay as may be and upon such terms as the court shall direct, and that the proceeds of such sale be brought into court for distribution, and that a decree, or decrees, *in personam* be entered against the said defendant hereinbefore named as stockholders of said corporation, first, for such amounts as shall appear to be due by them to said corporations as stock loans; and, second, for such an amount per share of the stock subscriptions and obligations of said corporation as they are liable for, respectively, as may by the court be deemed necessary, in addition to the other resources of said association, to constitute a fund sufficient in amount to pay and satisfy all of its debts and liabilities and all necessary costs and expenses of this litigation; and that the court will decree that the said mortgages given to secure the said subscriptions to the capital stock of said association and all subsequent assumptions thereof constitute valid and subsisting mortgage liens upon the properties described in the acts granting and assuming said mortgages to secure the sums named in said acts, and that all acts
88 of mortgages given to secure loans from said association and all acts of assumption of liability for such loans constitute valid and subsisting mortgage liens on the properties described in said acts, respectively, for the respective amounts therein named; and that the court will order and decree that all of said mortgaged properties be sold according to law, upon such terms and in such manner as the court shall direct.

And your orator prays that the funds to be brought into court under the decrees prayed for be thereafter equitably distributed, by further decree herein, between all such creditors as may be entitled to come in and shall come in under said decree, and establish their claims in proportion to the respective amounts thereof and in the order of rank in preference to which they may be entitled; and in all other respects your orator prays as he has heretofore prayed in his original bill, and for general relief.

May it please your honors to grant unto your orator writs of subpœna, to be directed to said defendants hereinbefore named as stockholders of said Consolidated Association of Planters of Louisiana, commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree herein as to this honorable court shall seem meet.

(Signed) JOSEPH P. HORNOR AND
F. W. BAKER, *Solicitors.*

(Signed) HENRY B. KELLY,
Of Counsel.

89 NOTE.—The Consolidated Association of the Planters of Louisiana, Robert W. Adams, John Calhoun, John Calder, John Borland, Wm. H. Byrnes, and John O. Scannell are not required to answer any of the interrogatories propounded.

All the other defendants are required to answer all of them.

William Cressey, being duly sworn, says that he is the complainant herein; that he has read the preceding bill and knows its contents, and that all the allegations therein set forth as of his own knowledge are true and correct, and that as to those set forth upon information he believes them to be true.

(Signed) WILLIAM CRESSEY.

Sworn to and subscribed before me this 29th day of January, 1884.

[SEAL.] (Signed) WALTER TURNBULL,
Not. Pub.

Petition pro Inter Esse Suo of the State of Louisiana. Filed Feb'y 7, 1884.

In the Circuit Court of the United States for the Eastern District of Louisiana. In Equity.

WILLIAM CRESSEY
vs.
THE CONSOLIDATED ASSOCIATION OF THE PLANTERS OF LOUISIANA *et al.* } No. 10432.

90 To the judges of the circuit court of the United States for the eastern district of Louisiana.

The petition of the State of Louisiana, by her attorney general, respectfully shows—

That under decretal orders heretofore rendered in the above-entitled cause this honorable court has, by its receivers, taken into its possession and judicially sequestered all of the assets of the said corporation defendant with a view to the final liquidation and settlement of its affairs and to the application of its said assets to the payment of its debts and the extinction of its liabilities under the authority and direction of this court.

Petitioner represents that its rights are directly involved and its interests largely concerned in the liquidation and settlement of the affairs of said defendant corporation, and that it has a special statutory lien, privilege, mortgage, and right of pledge for the guarantee and security of its said rights and interests upon the said assets of said corporation.

That the State of Louisiana is liable with and for said defendant corporation to the holders of certain bonds of the State issued in aid of said corporation, under the statutes set forth, and at the times and in the manner and for the purposes stated in the amended bill of complaint of the complainant herein, which in the said particulars is hereby adopted and affirmed as true by petitioner; that

91 there are now outstanding of said bonds of the State issued in aid of said corporation and upon which the State is liable

for account of said corporation bonds to the amount of sixty-four thousand two hundred and twenty-four dollars and fifty cents ($64,224.50), and that by the terms of the statutes under which said bonds were issued and of the contracts existing thereunder between the State and the said corporation and its stockholders the State—to the end that it may be exonerated from its said liability for account of said corporation to the holders of said bonds—is entitled to require that the said bonds shall be paid out of any fund to be derived from the assets of said corporation which may come into court in this proceeding, and especially out of any such fund arising from the enforcement of the stock subscriptions and stock mortgages of the stockholders of said corporation in the bills of complaint mentioned and by said bills prayed to be enforced.

And petitioner says that, in addition to the liability aforesaid of said corporation to the State, it is directly indebted to the State, for and on account of other of said bonds of the State issued as aforesaid in aid of said corporation, to the amount of four hundred and nineteen thousand nine hundred and forty-two dollars ($419,942.00), upon which bonds the State has redeemed its liability to the former holders thereof, incurred, as aforesaid, on account of said corporation, and which bonds, to the amount, as aforesaid, of $419,942, it now holds and owns, with full subrogation, as against said corporation, to the rights of the former holders of said bonds as evi-

92 dence of the obligation to the State on account thereof of the said corporation and its stockholders.

Petitioner shows that the said liability of the State upon said bonds issued in aid of said corporation was extinguished by the delivery by the State to the holders thereof and in exchange therefor of other bonds of the State, issued under the act of its Legislature known as the funding act of 1874, to the amount of two hundred and fifty-one thousand nine hundred and sixty-five dollars and twenty cents ($251,965.20), for which amount and for the interest to become due thereon, according to the terms of said bonds, the State of Louisiana became and is liable to the holders of said bonds.

And petitioner shows that for interest on said bonds issued under the funding act of 1874 as aforesaid, to the said amount of $251,-965.20, it has paid in cash up to the 31st of December, 1883, the sum of one hundred and seventeen thousand one hundred and sixty-three dollars and eighty-one cents ($117,163.81), for which amount, with interest, the said corporation is now indebted to petitioner; and, further, that petitioner is under obligation to pay and will pay when due other sums for interest on said bonds, for which sums, with interest thereon, the said corporation will be indebted to petitioner from the dates of such payments.

Petitioner says that by the operation aforesaid of funding said bonds of the State issued in aid of said corporation in said consolidated bonds of the State issued in exchange therefor under the funding act of 1874 the principal of the amount of the indebtedness of the State on account of said original bond was

93 reduced to an amount forty per cent. less than that of the

original bonds, but that the State, upon receiving said original bonds from the holders thereof, was by them subrogated to all of their rights against said corporation to the full amount of said original for bonds which it now holds and owns as evidence of such indebtedness of said corporation to the State.

But, petitioner says, at all times since the funding as aforesaid of said original bonds it has been and now is willing that the said corporation and its stockholders, who are eventually liable for its debts to the full amount of their stock subscriptions, may have the benefit of said reduction of forty per cent. of indebtedness upon the fair and equitable condition that the State shall be exonerated from its said liability on said bonds issued in aid of said corporation and still outstanding, other than those held by the State, by the payment of said bonds out of the assets of said corporation, and shall be exonerated from its said liability on account of bonds of the State issued under the funding act of 1874 in exchange for bonds issued originally in aid of said corporation by the purchase for account of said corpofation, with funds to be derived from its assets, of like bonds to a like amount and the surrender thereof to the State for cancellation, and upon the repayment to the State on account of said corporation, with funds to be derived from its assets, of all sums of money paid by the State in cash for interest on said bonds so as aforesaid issued under said funding act in exchange for said bonds originally issued in aid of said corporation.

94 And petitioner says that, as before stated, it is entitled under the several acts of its Legislature specifically mentioned in the bills of complaint herein, under which its said bonds in aid of said corporation were issued and extended, to a special and continuing statutory lien, privilege, right of pledge, and mortgage on the assets of said corporation now under administration in this court, as a guarantee for its security and reimbursement in respect of its said liabilities so as aforesaid incurred on account of said corporation, and that by the terms of said statutes and of the contracts existing thereunder between the State and the said corporation and its stockholders the State is entitled to have provision made out of the corporate assets for the payment of said debts and the extinction of said libilities so as aforesaid incurred by the State for account of said corporation.

Petitioner further says that it is essential to the assertion of its rights against the said corporation and its stockholders and to the protection of its interests in and lien, privilege, and right of pledge upon the said corporate assets that it shall for those purposes become a party to this proceeding, and that unless it be admitted a party thereto to that end it will be altogether remediless in the premises.

Petitioner hereby adopts, so far as they are pertinent to its said purposes, all of the averments and denials of the bills of complaint of the complainant herein, and hereby reiterates the same on its own behalf.

95 Wherefore petitioner prays it be allowed to file this its petition *pro inter esse suo*, and that it be admitted a party to the

cause for the purposes herein stated; that it may come in under said decretal orders and establish its said claims against the said defendant corporation and the stockholders thereof, and its lien, privilege, and right of pledge upon the assets of said corporation now under administration in this court; that it may have the benefit of all decrees which may — hereinafter rendered in the cause to the extent to which the court shall consider it entitled thereto; and, in so far as the prayers for relief in the bills of complaint of complainant herein contained are conducive to or consistent with the relief sought by petitioner, petitioner hereby joins in and adopts said prayers; and petitioner prays for all such other and further relief in the premises as equity and good conscience may require and to your honors shall seem meet; and will ever pray, etc., etc.

(Signed) J. C. EGAN,
Att'y General.

Order.

Let this petition *pro inter esse suo* of the State of Louisiana be filed, and let the petitioner be admitted as party to the cause for the purposes stated in the petition.

Feb'y 7th, 1874.

(Signed) DON A. PARDEE, *Judge.*

96 *Answer. Filed March 3rd*, 1884.

In the Circuit Court of the United States for the Eastern District of Louisiana. In Equity.

WM. CRESSEY
vs.
THE CONSOLIDATED ASSOCIATION OF THE PLANTERS OF LOUISIANA *et als.* } No. 10432.

The joint and several answer of Robert W. Adams, John Calhoun, John Calder, John Borland, William H. Byrnes, and John O. Scannell, six of the defendants, to the bill and amended bill of complaint of William Cressey, complainant.

These defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bills contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say—

That it is true, as stated in said bills, that these defendants constitute the board of directors of the said Consolidated Association of the Planters of Louisiana last appointed and in office, the said defendant, Robert W. Adams, being president of said board;

97 and that it is true, as stated in said bills, that by and under an act of the General Assembly of the State of Louisiana of March 16th, 1827, the said Consolidated Association of the Planters

of Louisiana was duly created a corporation and body politic and organized as such, with a capital stock of two million five hundred thousand dollars, to be subscribed for by the stockholders of said corporation, none of which was required to be paid in for the purpose of constituting the cash capital of said corporation with which its business was to be carried on, but thus it was contemplated and intended by said act that such cash capital should be procured by said corporation by a loan of two millions of dollars, to be effected by it upon bonds to be issued by said corporation, the payment of which was to be secured by a pledge of the stock subscriptions aforesaid and of the mortgages to secure the payment thereof, required by said act to be executed by the said subscribers to the capital stock of said corporation upon real estate of said stockholders of adequate value, to secure the shares of stock subscribed for by them respectively, and that it was contemplated and intended by said act and by the subscribers to the capital stock of the said corporation thereby created that the said stockholders were to be obligated by their said subscriptions to pay in so much thereof, to the extent of five hundred dollars per share of stock subscribed for, as might thereafter at any time become necessary to enable the said corporation to reimburse, in principal and interest, the said loan of two million dollars so as aforesaid to be effected by it, and to pay all other debts of said corporation thereafter to be con-
98 tracted which it might be unable at any time thereafter to pay out of other assets to be acquired by it in the course of its corporate business; and, further, these defendants say that it is true, as stated in said bills, that the said Consolidated Association did not effect said contemplated loan of two millions of dollars or any loan upon its corporate bonds secured as aforesaid by said stock subscriptions and mortgages, but that subsequent to the passage of said act of March 16th, 1827, and the organization of said corporation thereunder, to wit, on the 19th of February, 1828, an act amendatory of said act of 1827 was passed, whereby the amount of said stock subscriptions to be secured by mortgage as aforesaid was authorized to be increased from two million five hundred thousand to three million dollars, and the amount of the loan to be negotiated was increased from two million to two million five hundred thousand dollars; and that to facilitate the negotiation of the said loan the faith of the State of Louisiana was pledged by said act of 1828, and its bonds to the order of said corporation, for said amount of two million five hundred thousand dollars, payable in the manner and at the times stated in complainant's bills, were executed and delivered and the proceeds of the sale of said bonds received by said corporation, and that said proceeds constituted its entire cash capital; and that the faith of the State was so pledged and its bonds to the amount aforesaid executed and delivered for the benefit and accommodation of the said corporation and its stockholders; and that the said stockholders were entitled, under the terms
99 of said acts of 1827 and 1828, to loans from said corporation upon their stock, to the extent of the moiety thereof, to loans amounting to one million five hundred thousand dollars, out of the

said two million five hundred thousand dollars so as aforesaid borrowed by said corporation upon the faith and credit of the State of Louisiana; and these defendants say, upon information and belief, that the said stockholders availed themselves of the credit to which they were entitled as aforesaid to a very large, if not to its entire, extent, and that very nearly, if not altogether, two-thirds of the said loan of two million five hundred thousand dollars, obtained on the credit of the State as aforesaid, was actually paid over in the shape of stock loans to said stockholders for their respective individual uses.

And these defendants say that it is true, as stated in said bills of complaint and as appears from inspection of said acts of 1827 and 1828, that the stock subscriptions and stock mortgages aforesaid were by said acts constituted a special trust fund for the security and payment of said loan of two million five hundred thousand dollars, and that a special and continuing statutory lien and privilege thereof was provided by said acts in favor of the corporation, the State, and the bondholders to guarantee the reimbursement of said loan, and these defendants further say that it is true, as stated in said bills of complaint, that thereafter, and prior to the 17 of November, 1842, the said corporation became embarrassed and failed to meet its current obligations as a banking institution, and that on said 17th day of No-
100 ber, 1842, a decree of forfeiture of charter was pronounced against it by a court of competent jurisdiction in a certain proceeding against it at the suit of the State of Louisiana, but these defendants say that it is true, as stated in said bills, that said decree of forfeiture did not put an end to the corporate existence of said Consolidated Association by reason of an expressed provision to the contrary in the act under which said proceeding was had and said decree pronounced, as truly set forth in said bills; and that it is true, as stated therein, that under the said provision of said act and under subsequent acts of the Legislature of Louisiana mentioned in said bills the corporate existence and organization of said Consolidated Association for purposes of liquidation have been preserved and continued down to the present time; and these defendants further severally admit the truth of the statements in said bills contained as to the renewal and extension of the bonds of the State issued as aforesaid and of the execution and issuance of the bonds of said association under the act of June 30th, 1866, set forth in said bills; and that the said bonds of said association were in the terms stated and were annexed, as stated, to the bonds of the State in aid of said association then outstanding; and these defendants admit that the several acts of the Legislature of the State of Louisiana relating to said corporation and the liquidation of its affairs mentioned in said bills are therein correctly set forth and the action had thereunder truly stated, and especially that it is true, as stated in said bills, that none of the stockholders
101 of said corporation have availed themselves of the benefit of act No. 20 of the extra session of 1878, or of act No. 78 of 1882, by complying with the terms required by said acts, to entitle them to the delays and facilities proffered them by said acts upon the terms and conditions therein stated; but these defendants say that,

on the contrary, as far as they are informed or have been able to ascertain, all of said stockholders, upon the pretenses set forth in said bills, deny that they are indebted or liable in any way for any sum or sums whatever to the said corporation or to the State or to the bondholders for or on account of the stock obligations and mortgages aforesaid.

These defendants say that, to the best of their information and belief, the statements as to the value of the present assets of said corporation and as to the character and amount of its present debts and liabilities in said bills of complaint contained are true and correct, but they severally say whether the complainant is the holder and owner of the certain bonds described in said bills and therein averred to be held and owned by him these defendants have no knowledge or information other than as derived from the said averments of said bills, the truth of which they neither admit nor deny, but as to which they insist that the said complainant shall be held to make due proof, as the court shall direct.

And, further, these defendants severally say that it is true, as stated in said bills, that the liquidation of the affairs of the said cor-
102 poration has been protracted for an unconscionable period—that is to say, from the 17 of November, 1842, when said decree of forfeiture of charter was pronounced, to this time; but these defendants, upon information and belief, severally say that the said liquidation has been so protracted at the instance and for the benefit and accommodation of the said stockholders, who are ultimately liable as aforesaid for the debts of said corporation; that from 1842 until 1866 they availed themselves of all the extensions of time granted them in respect of their liability for the debts of said corporation, but that since the expiration of the delays granted them by said act of 30th of June, 1866, they pretend that they have been discharged from all liability for or on account of the said debts of said corporation by reason of the said long delays and of the heavy expenses attending the liquidation of its affairs, and also by reason of their said liability having been extinguished by novation thereof, effected under the terms of the act of April 6th, 1847, and the payment or extinguishment by effect of prescription of the obligations incurred by said contracts of novation, which pretenses these defendants are advised *and* are materially *and* insufficient in law, for the reasons set forth in said bills of complaint, to discharge said stockholders from their said liability.

And as to all averments of maladministration of the affairs of said corporation in said bills contained these defendants neither admit nor deny the truth thereof, except as to their own administration, and as to theirs they severally deny that there has been any maladminis-
103 tration by them of the affairs of said corporation, or that any unreasonable or extravagant or unnecessary expenses have been incurred or expenditures made by them on account thereof; but, on the contrary, they say that the affairs of said corporation have been faithfully and economically administered by them, to the best of their skill and abilities, during their incumbency in office; but they admit that, for reasons in nowise implying any fault or

dereliction of duty on their part, they have been powerless to accomplish the substantial purposes intended and contemplated by said acts of the Legislature of Louisiana under which they were appointed and qualified, to wit, to effect the application of the assets of said corporation to the payment of the outstanding debts, and especially to the reimbursement of the State of Louisiana for the large indebtedness and its exoneration from the large liabilities incurred by it on account of and for the benefit and accommodation of said corporation and its stockholders, which can be substantially accomplished only by holding the said stockholders to their ultimate liability incurred by them as aforesaid for the debts of said corporation upon their stock obligations and mortgages aforesaid.

And now, having fully answered the said bills, these defendants submit themselves to the judgment of this honorable court in the premises, and pray to be hence dismissed with costs; and they will ever pray, etc., etc.

(Signed) R. W. ADAMS.
JNO. CALHOUN.
J. O. SCANNELL.
W. H. BYRNES.
JOHN CALDER.

On this February 29, 1882, appeared the above-named R. W. Adams, John Calhoun, John O. Scannell, William H. Byrnes, and John Calder, and signed the above answers in my presence, and made oath in due form of law that all the statements therein made of their own knowledge are true, and those derived from information and belief they believe to be true.

Witness my hand and seal.

[SEAL.] (Signed) ANDREW HERO,
Not. Pub.

104 *Demurrer of Sundry Defendants. Filed May* 5, 1884.

United States Circuit Court, Eastern District of La. In Equity.

WILLIAM CRESSEY
vs.
CONSOLIDATED ASS'N OF PLANTERS OF LA. *et al.* } No. 10432.

The demurrer, joint and several, of Edward Morphy, Albert Dufour, Charles T. Dugazon, Pierre Lanaux, Emile Soulié, Collin E. McNeil, Mrs. George J. Lord, Hermann Meyer, John Chaffe, Helen Morphy, Paul Morphy, Nicholas M. Bénachi, The New Orleans Canal and Banking Company, The Citizens' Bank of Louisiana, Mrs. Malvina Morphy, wife of John D. Sybrandt, and John D. Sybrandt, Jules Lavergne, John J. Noble, and Mrs. John J. Noble, his wife; Armand Caycault, Idalie Lavergne, widow of Paul La Branche, Mrs. Malvina T. Layton, and Rob't Layton, her husband; Mrs. Josephine De Jean and Pierre De Jean, her husband; Mrs. Julia Riley and Edward J. De Hart, her husband; Levi J. Harris, Margaret McNeil, and Martha Ann McNeil, defendants, to the bill and amended bill of complaint of William Cressey, complainant.

These defendants, by protestation, not confessing all or any of the matters and things in the said complainant's bills contained to be true in such manner and form as the same are therein set forth, do demur to said bills, and for cause of demurrer show that com-
105 plainant hath not by his said bill made such a case as entitles him to the relief prayed as to the matters contained in the said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants do demur thereto, and they pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

(Signed) R. H. MARR,
JULES LAVERGNE,
ROUSE & GRANT,
Solicitors for Defendants.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, } *ss:*

——— ———, defendant in the above-entitled suit, being duly sworn, says that the foregoing demurrer is not interposed for delay.

——— ———.

Sworn and subscribed to before me this — day of ———, 188–.

——— ———.

[Written across the face:] Waived. Hornor.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

(Signed) J. D. ROUSE,
Of Counsel.

106 *Demurrer. Filed June* 2, 1884.

United States Circuit Court, Eastern District of Louisiana. In Chancery.

WILLIAM CRESSEY.
vs.
CONS'D ASS'N PLANTERS *et al.* } No. 10432.

The joint and several demurrer of Henry Beer, Barthelemy Beaubay, Mrs. Louise de Balathier, widow of Wm. C. C. Claiborne, Auguste Dabail, Louis Dacasse, Mrs. J. V. Gourdain and her husband, J. V. Gourdain; Widow Angeline Avegno Lapeyre, Philip Lavergne, Coralie Laloire, Mrs. Widow Anna Brand Ledoux, Miss Anna Ledoux, Mrs. Gabrielle Ledoux, wife of the Marquis de Valloré; Charles Getzinger, Rene T. Beauregard, Mrs. Elodie Verret, wife of Leon Bernard and Leon Bernard, her husband, and Mrs. Elmire Verret, widow of Marcial Le Boeuf, defendants, to the bill of complaint, as amended, of William Cressey, complainant.

These defendants, by protestation, not confessing all or any of the matters and things in the said complainant's bills contained to be true in such manner and form as the same are therein set forth, do demur to said bill, and for cause of demurrer show that complainant hath not by his said bills made such a case as entitles him to the relief prayed as to the matters contained in the said bills or any of such matters.

Wherefore, and for divers other good causes of demurrer
107 appearing in said bills, these defendants do demur thereto, and they pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to said bills, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

(Signed) R. H. MARR,
JULES LAVERGNE,
ROUSE & GRANT,
Solicitors for Defendants.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, } *ss:*

——— ———, defendant in the above-entitled cause, being duly sworn, says that the foregoing demurrer is not interposed for delay.

——— ———.

Sworn and subscribed to before me this — day of ———, 188–.

——— ———.

[Written across the face:] Jurat waived. Hornor.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

(Signed) J. D. ROUSE,
Of Counsel.

108 *Demurrer of Sundry Defendants. Filed July* 7, 1884.

United States Circuit Court, Eastern District of Louisiana. In Chancery.

WILLIAM CRESSEY
vs.
CONS'D ASS'N PLANTERS, LA., *et al.* } No. 10432.

The joint and several demurrer of J. Fortune Zeringue, Bernard Lemann, Henry S. Sanford, and Emile Rost, Helena Gottschalk, Jos. Le Bourgeois, and Auguste Levert, defendants, to the bills of complaint of William Cressey, complainant.

These defendants, by protestation, not confessing all or any of the matters and things in the said complainant's bills contained to be true in such manner and form as the same are therein set forth, do demur to said bills, and for cause of demurrer show that complainant hath not by his said bill made such a case as entitles him to the relief prayed as to the matters contained in the said bills or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing in said bills, these defendants do demur thereto, and they pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to said bills, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

(Signed) R. H. MARR,
JUL. LAVERGNE,
ROUSE & GRANT,
Solicitors for Defendants.

109 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Louisiana,

—— ——, defendant in the above-entitled cause, being duly sworn, says that the foregoing demurrer is not interposed for delay.

—— ——.

Sworn and subscribed to before me this — day of ——, 180–.

—— ——.

[Written across the face:] Jurat waived. (Signed) Joseph P. Hornor, F. W. Baker, for pl't'ff.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

(Signed) J. D. ROUSE,
Of Counsel.

Decree Overruling Demurrers of the Several Appellees.

The demurrers of the several defendants, who are appellees herein, were overruled on the 29th day of April, 1885.

Plea of Levi J. Harris. Filed Nov. 3, 1884.

Circuit Court of the United States, Fifth Circuit, Eastern District of Louisiana. In Equity.

110 WILLIAM CRESSEY *vs.* CONS. ASS'N and Others. } No. 10432.

The plea of Levi J. Harris, who resides in the city of New Orleans, who is a citizen of the State of Louisiana, and who is one of the defendants to the original and amended bills of complaint of William Cressey, complainant herein, filed and exhibited.

This defendant, by protestation, not confessing or acknowledging to be true all or any part of the matters and things in the said bills of complaint contained in manner and form as the same are therein set forth, for plea, nevertheless, to the said bills doth plead and aver—

That if any right or cause of action ever existed against this defendant or against the individual stockholders of the Consolidated Association of the Planters of Louisiana upon or to enforce payment of the bonds sued on in this case, which this defendant doth in no sort admit, such right or cause of action was extinguished and forever precluded and barred by the compromise contract and settlement made pursuant to and in conformity with the act of the Legislature of the State of Louisiana approved on the sixth of April, 1847, being act No. 100 of that year.

And, for full exposition and the better understanding of this plea, defendant pleads and avers—

111 That shortly after the corporate existence of the said Consolidated Association had terminated by the judicial decree of forfeiture of its charter rendered in the month of November, 1842, the State of Louisiana, through its officers appointed for that purpose, took possession of all the assets and assumed the exclusive management and liquidation of the affairs of said association under and in virtue of two acts of the Legislature of said State, one approved on the 14 March, 1842, being act No. 98 of that year, the other approved on the 5 April, 1843, being act No. 92 of that year, section 3 of which last-mentioned act declared and enacted "that the assets of the Consolidated Bank of the Planters of Louisiana are and shall remain in the possession and under the exclusive management of the State of Louisiana until final payment of all the State bonds issued in its favor."

That the possession and the exclusive management and liquidation thus taken and assumed by the State under the aforementioned acts of 1842 and 1843 continued without change until after the pas-

sage of the act No. 100 of 1847, by which the Legislature invited the stockholders to participate in the liquidation.

That the State of Louisiana was the owner of two thousand shares of the stock of said association, of the par value of one million of dollars; that the State was also the maker, the primary obligor, and was bound absolutely for the payment of the bonds issued in favor of said association; that the individual stockholders were not parties to these bonds; that all of said bonds outstanding would be due and payable on the 30 June, 1848; that the principal
112 part of the assets of the association at the time the decree of forfeiture of the charter was rendered consisted of debts for loans secured by mortgages on lands and slaves in different parts of the State not immediately available for the payment of the debts; that the State had not the means to meet the bonds at their approaching maturity.

That the association was insolvent and the deficiency of assets could be supplied only by contributions by the individual stockholders, for which no provision had been made in the charter, and in this condition of the affairs of the association the Legislature sought relief for the State by the act No. 100 of 1847, entitled "An act to protect the State against loss on account of its liabilities for bonds issued for the use of the property banks," by which act a plan of liquidation was proposed by the State to the stockholders of the association and to the holders of the bonds of the State issued for its use, which said plan required for its accomplishment and for the relief of the State—

1st. The extension of the payment of the bonds of the State for six, nine, twelve, fifteen, and eighteen years from and after the approaching maturity, so as to make them payable by fifths on the 30 June of each of the years 1854, 1857, 1860, 1863, and 1866.

2d. The levy of a contribution on the shares of stock sufficient, with the other assets of the association, to meet the bonds of the State so extended, such contribution to be payable in seventeen equal annual instalments, the last to be due on the first of June, 1866.

That the objects and purposes contemplated by this act
113 could not have been accomplished without the acceptance by the stockholders and by the holders of the bonds of the plan proposed by the State.

That the stockholders, at a meeting called pursuant to and as provided in said act, section 3, held on or about the 5 June, 1847, accepted said plan and elected the three directors provided for and required by said act; that the said directors, in conjunction with the managers appointed by and specially representing the State, having full power and authority conferred upon them by the said act, sections 3 and 6, determined that a contribution of one hundred and two dollars per share, payable in instalments, as provided and required by said act, section 6, would be sufficient, with the other assets of the association, to meet the bonds of the State at the extended terms of payment, and the said managers and directors proceeded to levy that contribution.

That the several stockholders paid this contribution at the maturity, respectively, of each instalment, or with interest where the payments were deferred, except a few of the stockholders who failed to pay in full, leaving about thirteen thousand dollars only of said contribution not paid.

That the holders of the bonds of the State accepted this plan and ratified the action of the managers and directors by consenting to the extension of payment, as provided in section 4 of said act No. 100, and by receiving payments by fifths.

That no attempt was ever made by the State of Louisiana from the year 1847 to the year 1878 to supplement this contribu-
114 tion; that no attempt was ever made by any holder of the bonds to supplement it until this suit was brought, and that the State and the holders of the bonds, by their contemporaneous and subsequent action and by their silence and acquiescence for a period of more than thirty years after the levying of said contribution, have accepted that contribution as sufficient.

And defendant more precisely and specifically pleads and avers that he was not an original stockholder of the said association; that on the 9 May, 1859, he acquired, by purchase from Mrs. Victoire Celanie Delame, widow of Francis Bernondy, by act before Amédée Ducatel, notary, a certain lot of ground, with the buildings and improvements on it, in the city of New Orleans, in the square bounded by Custom-House, Dauphine, Burgundy, and Bienville streets, and twenty-five shares of the stock of the said Consolidated Association, for the price of $8,000, which was the full value of the property; that his vendor had paid all the instalments of the stock loan and all the instalments of the contribution levied under the act No. 100 of 1847, secured by mortgage on said property, which had been exigible up to the date of the purchase of said property by defendant, and she owed to the association in liquidation six instalments of the stock loan, amounting to $1,556.23, payable, respectively, on the first of March of each of the years 1860 to 1865, inclusive, and seven instalments of the contribution levied under the act No. 100 of 1847, amounting to $1,050, payable, respectively, on the first of June of each of the years 186– to 1865, inclusive,
115 said stock loan and contribution being secured by mortgage on the property; that defendant paid, on account of the price, in cash, $5,393.77, and for the balance of the price he assumed the amount due by his vendor to the association, aggregating, for stock loan and contribution, $2,606.27, and to that extent only he assumed and took the reversion of the stock mortgage of his vendor; that at their respectives maturities defendant paid the two instalments of the contributions, due 1 June, 1859, and 1 June, 1860, respectively, amounting to $300, and on the 5 June, 1860, he paid the instalment of the stock loan due 1 March, 1860, amounting to $295.83; that defendant declined to renew his obligations under the act of 1866 and, on the 18 July, 1868, he paid the entire balance of stock loan and contribution, with interest added, at 8%, from the respective maturities of the several instalments.

That the holder or holders of the three bonds, Nos. 382, 1034,

1199, filed with and as exhibits to the bills of complaint herein, accepted the said plan of liquidation and the contribution levied under the act No. 100 of 1847 as sufficient by specially consenting, on or about the 15 August, 1848, to the extension of payment, as provided by section 4 of said act, and by accepting the additions printed on the face and on the reverse of each of said bonds and the annexes to said bonds made pursuant to said act, and by receiving payment of the four-fifths exigible in the years 1854, 1857, 1860, 1863, as appears by the reading and inspection of said bonds and the additions and annexes as herein filed and exhibited.

That the said act No. 100 of 1847, by reason and by means
116 of the premises, was and became a compromise, a contract, and a settlement of the liability of the individual stockholders of the said Consolidated Association, and that no additional assessment or contribution can be required of this defendant.

Wherefore this defendant prays judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bills of complaint, and that he be hence dismissed with his reasonable costs and charges in this behalf sustained.

(Signed) R. H. MARR,
JULES LAVERGNE,
ROUSE & GRANT,
Sol's for Defendant.

Levi J. Harris, being duly sworn, says that the foregoing plea is true in point of fact and is not interposed for delay.

(Signed) L. J. HARRIS.

Sworn and subscribed to before me this 4th day of ——, 1884.

[SEAL.] (Signed) AMEDÉE DUCATEL,
Not. Pub.

In my opinion the foregoing plea is well founded in point of law.

(Signed) WM. GRANT, *Counsel.*

117 *Decree Overruling Plea of Levi J. Harris.*

Extract from Minute Book, April Term, 1885.

NEW ORLEANS, WEDNESDAY, *April* 29, 1885.

Court met pursuant to adjournment.

Present: Hon. Don A. Pardee, circuit judge.

WM. CRESSEY
vs.
THE CONSOLIDATED ASSOCIATION OF THE PLANTERS OF LOUISIANA. } No. 10432.

This cause came on to be heard at the last November term, 1884, upon the plea of Levi J. Harris, defendant, and was argued by counsel. Whereupon and upon consideration thereof it is ordered and decreed that the said plea be, and the same is hereby, overruled.

118 *Answer. Filed May* 21, 1885.

WILLIAM CRESSEY
versus
THE CONSOLIDATED ASSOCIATION OF PLANTERS, etc., and Others. } In Equity. No. 10432.

Herman Meyer, Charles Getzinger, Mrs. Elizabeth Eugenie Granet, widow of George Josiah Lord, Pedro Landreaux, Marie Landreaux, Bartholemy Beaubey, The Citizens' Bank of Louisiana, Bernard Lemann, Meyer Lemann, Richard T. Hanson, defendants, to the original and amended bills of complaint of William Cressey, complainant, herein filed and exhibited, for joint and separate answer to the said bills, or to so much thereof as they are advised it is material for them to answer, do each and all of them allege and say:

I.

That the Consolidated Association of the Planters of Louisiana was a banking corporation, a citizen of the State of Louisiana, having its domicil at the city of New Orleans, and was created and chartered by two acts of the Legislature of said State, approved, one on the 16th of March, 1827, the other on the 19th February, 1828, for a period of fifteen years, to expire on the 30th June, 1843.

That the charter provided for the procuring by said association, to be used in banking, of the sum of two million five hundred thou-
119 sand dollars by loans to be obtained on the faith of the State and upon the bonds of the State, to mature in five, ten, and fifteen years.

That the stockholders were not required and were not expected to pay any money for the stock taken by them, and no provision was made in the charter for any calls upon the stockholders, or for any contributions by them; that the capital stock, to be taken and subscribed for by individuals, was divided into six thousand shares of five hundred dollars each; that each stockholder was required to give a mortgage in favor of the association on lands and slaves equal in value to the number of shares taken and subscribed for by him, in consideration of which a credit was opened in said association in favor of each stockholder equal to two hundred and fifty dollars per share on the whole number of shares taken by him, to be exercised by way of loan to each stockholder, to be represented by his note or obligation, payable, with interest, in such annual instalments as would extinguish the entire amount before the expiration of the charter secured by the original stock mortgage, and the stockholders were not required to give, and did not give, any other obligation than their subscriptions, by which they agreed to take the number of shares of stock subscribed for by them, respectively, and the stock mortgages in favor of the association, and the notes or obligations representing the loans granted to them, respectively, by the association.

That the bonds issued by the State were payable to the order

of the president, directors, and company of the association, in consideration of which it was specially stipulated in the charter,
120 the act of 19th February, 1828, that the State should be a stockholder to the extent of two thousand shares, of the par value of one million of dollars, as a bonus; should participate in the profits and dividends on that sum, and should have a credit in the association of two hundred and fifty thousand dollars, to be exercised at its pleasure and during the entire duration of the charter, by way of loan; that the State should appoint annually six of the twelve directors, the other six to be elected by the stockholders, and no mortgage or other security was given by or required of the State.

That by act of 1830 the bonds of the first series remaining undisposed of were attached to the second series, and by act of 1835 the directors were authorized to postpone the payment of all the bonds outstanding to 30th June, 1848, and a delay of two years from that date was allowed to the association to liquidate and close its affairs.

That the business of the association was profitable for several years, insomuch that the account of the State with the association was credited with dividends amounting to $125,000, but subsequently the association, in common with all the banking institutions of the United States, was compelled to suspend specie payments, and, in 1842, the State of Louisiana brought suit against the association, in the first judicial district court, No. 21646 of the docket, in which such proceedings were had that a final judgment was rendered, which was signed on the 17th November, 1842, by which
121 the forfeiture of the charter was declared and decreed.

That shortly after the corporate existence of said association had terminated by the said judicial decree of forfeiture of its charter the State of Louisiana, through its officers appointed for that purpose, took possession of all the assets and assumed the exclusive management of the affairs of the said association under and in virtue of two acts of the Legislature approved, one on the 14th March, 1842, being No. 98 of the acts of that year, the other on the 5th April, 1843, being No. 92 of the acts of that year, section 3 of which last-mentioned act declared and enacted "that the assets of the Consolidated Bank of the Planters of Louisiana * * * are and shall remain in the possession and under the exclusive management of the State of Louisiana until final payment by it of all the State bonds issued in its favor."

That the possession and exclusive management thus taken and assumed by the State continued without change until after the passage of the act No. 100 of 1847, by which the stockholders, after having been excluded for more than four years, were invited by the State to assist in the liquidation.

That the State was the maker, the primary obligor, and was bound absolutely for the payment of its bonds issued in favor of the association; that the individual stockholders were not parties to these bonds; that all of said bonds outstanding would be due and exi-

gible on the 30th June, 1848; that the principal part of the
122 assets of the association, at the time the decree of forfeiture of the charter was rendered, consisted of debts for loans, secured by mortgage on lands and slaves in different parts of the State, of more than double the value of the balances due for loans, but not immediately available; that the State had not the means to meet the bonds at their approaching maturity; that the association was insolvent, and had been deprived of the possession of the assets and excluded by the State from voice or participation in the management and administration of its affairs; that, under the exclusive management by the State, it had been ascertained that the deficiency of assets would be about five hundred thousand dollars, which could be supplied only by contributions by the individual stockholders, for which there was no provision in the charter, and, in this condition of the affairs of the association, the Legislature sought relief for the State by the act No. 100, approved 6th April, 1847, entitled "An act to protect the State against loss on account of its liabilities for bonds issued for the use of the property banks," by which act a plan of liquidation was proposed by the State to the stockholders of the association and to the holders of the bonds of the State issued for its use, which said plan required for the relief of the State—

1st. The extension of the payment of the bonds of the State.

2d. The levy of a contribution on the shares of stock sufficient, with the assets of the association, to meet the bonds so extended.

3d. The control of the liquidation by the State.

123 That the control of the liquidation by the State was secured by the second section of said act, which provided for the appointment by the State of three bank managers, one of whom was to be designated as the president of the Consolidated Association and by the third section of said act, which provided for the election by the stockholders of three directors, who, with the three managers appointed by the State, were charged with the liquidation, with the express proviso "that no act of the directors shall have any validity or force until it shall have received the sanction of two of the managers representing the State."

That the objects and purposes contemplated by this act could not have been accomplished without the acceptance in its entirety by the stockholders and by the holders of the bonds of the plan proposed by the State.

That a majority of the stockholders, in number and amount, at a meeting called pursuant to, and as provided in section 3 of said act, held on or about the 5th of June, 1847, accepted said plan and elected the three directors provided for and required by said section; that the said directors, in conjunction with the three managers appointed by and specially representing the State, having full power and authority conferred upon them, more especially by sections 3 and 6 of said act, ascertained that the deficiency of assets would be about $500,000, and they determined that a contribution of $102 per share, payable in seventeen equal annual instalments, as provided for and required by said section 6, would be sufficient,
124 with the assets of the association, to meet the bonds of the

State at the extended terms of payment, which said contribution on the 6,000 shares of stock was $112,000 in excess of the actual deficiency, and the said managers and directors proceeded to levy that contribution, the first, of six dollars per share, payable on the first of June, 1849, and the others, of same amount, payable on the first of June of each of the sixteen succeeding years to and including the year 1865.

That the said managers and directors proceeded to ascertain and fix the amount, in capital and interest, due by each stockholder for stock loan up to first June, 1848, and divided that amount into eighteen annual instalments, with interest added from 1st June, 1848, the first of which instalments was payable on the 1st June, 1848, and the others on the 1st June of each succeeding year to and including the year 1865; for which several instalments, with seven per cent. interest added, the individual stockholders gave their notes or obligations secured by the stock mortgages.

That the stockholders, with few exceptions and for comparatively small amounts, have paid the entire contribution levied under the act No. 100 of 1847, and all the instalments of the loan debt, with 8 per cent. interest from maturity where the payments were not made promptly, and the failure to collect the entire contribution and the entire loan debt is attributable solely to the fault of the State and the maladministration of the liquidation under the supervision and control of the State.

That the contribution of $102 per share was secured, as
125 also was the loan debt, by the stock mortgages on productive real estate and slaves engaged in the cultivation of the mortgaged lands; that the contribution was amply sufficient at the time it was levied to supply the deficiency of the assets, and the stockholders are not responsible for any deficiency subsequently occurring since the protracted liquidation commenced.

That the holders of the bonds of the State accepted this plan of liquidation and approved and ratified the action of the managers and directors by consenting to the extension of payment for six, nine, twelve, fifteen, and eighteen years, as provided in section 4 of the said act of 1847, and by receiving payments by fifths; that no attempt was made by the State to supplement this contribution until the act of 1878 was passed, which will be more particularly referred to hereinafter; that no attempt to supplement it was made by the persons charged with the liquidation of the affairs of said association until after the month of June, 1880; that no attempt to supplement it was made by any holder of the bonds of the State until the present suit of William Cressey was brought, and the State and the persons charged with the said liquidation and the holders of the bonds of the State, by their contemporaneous and subsequent action and conduct and by their acquiescence and silence for a period exceeding thirty years after the said contribution was levied, have irrevocably accepted it as sufficient, and are now, each and all of them, precluded, estopped, and cannot now be heard to assert that it was not sufficient.

That the holder or holders of the bonds Nos. 382, 1034, — 1199,

filed with and as exhibits to the bills of complaint herein, all
126 of which were due and exigible on the 30th June, 1848, accepted the said plan of liquidation and the settlement made and the contribution levied under said act of 1847 as satisfactory and sufficient; and subsequently and pursuant to an agreement concluded on or about the 15th of August, 1848, after the maturity of said bonds, the said holder or holders assented to the extension of payment as provided in section 4 of said act, and actually received payment of three-fifths of the bond No. 382 and four-fifths of each of the bonds Nos. 1034 and 1199, respectively, and approved and ratified the additions and annexes to said bonds as herein filed and exhibited, by which the contracts as originally expressed in said bonds were modified in accordance with the said act of 1847 and the settlement made pursuant to its terms and provisions.

That defendants do not know and they have no means of knowing who was the holder of said bonds or of any of them at the time the said modification was made and at the time of the said payments, but they allege that any and all holders of the said bonds are bound and that the complainant, William Cressey, is bound and concluded by said settlement and modification.

That by means and by reason of the premises the act No. 100 of 1847 was and became an executed contract, an accepted compromise, and a final fixing and settlement of the extent of the liability of the individual stockholders, and no additional contribution can be demanded or required of these defendants or of any of them.

127 II.

That on or about the 19th of March, 1881, the president and directors, the liquidators of the Consolidated Association of the Planters of Louisiana, all of whom were State officers, appointed by the State of Louisiana under and by authority of the act No. 20 of 1878, extra session, brought suit, in the civil district court for the parish of Orleans, No. 2662 of the docket, against George Josiah Lord, who was the owner of 22 shares of the stock of said association, which he acquired, with the property originally mortgaged to secure them, on the 14th March, 1850, to recover of said Lord five instalments, remaining unpaid, of the contribution levied under the act No. 100 of 1847, which had become due and exigible on the 1st June of each of the years 1861 to 1865, inclusive, respectively; to recover, also, forty dollars per share, levied by the said president and directors on or about the 13th July, 1880, under and by authority of the said act No. 20 of 1878, and to enforce the stock mortgage assumed by said Lord in the notarial act of 14th March, 1850, by which the property mortgaged and the 22 shares of stock were conveyed to him.

That the State of Louisiana intervened in said suit and joined the plaintiffs, and, through the attorney general, the proper officer, actively participated and assisted in the prosecution of said suit.

That before said Lord acquired the property and the shares of

stock his predecessors, the authors of his title, had paid the
128 entire debt for loans granted on said shares and so much of the contribution levied under the act No. 100 of 1847 as had become exigible; that said Lord paid all the instalments annually of the contribution levied under said act of 1847 as they respectively became subsequently exigible to and including that which became exigible on the 1st June, 1860, and the questions to be determined in said suit were whether the remaining instalments of said contribution which became exigible respectively on the first of June of each of the years 1861 to 1865, inclusive, were barred by prescription, and whether the said Lord was liable for the contribution of forty dollars per share levied under the act No. 20 of 1878, extra session.

That from the judgment of the civil district court against him the said Lord appealed to the supreme court of the State of Louisiana, and the said cause, on the appeal, was No. 8589 of the docket of said court; that the State of Louisiana was a party, one of the appellees, in said cause; that the attorney general appeared in behalf of the State and participated actively in said cause on the appeal as he had done in the district court; that such proceedings were had in said appeal that a final decree was rendered on the 23rd April, 1883, in and by which the said supreme court held and decided, in last resort, that the instalments of the contribution levied under said act of 1847 remaining unpaid were barred by prescription, and that the said act of 1847 and the settlement made pursuant to its terms and provisions constituted a contract by which the stockholders were discharged from further liability to the association in liquida-
129 tion and to the State of Louisiana, and that no additional contribution could be required of them, and the judgment appealed from was reversed and final judgment was rendered in favor of appellant, defendant, rejecting the demand of plaintiffs and dismissing their suit.

That the said supreme court was the highest judicial tribunal of the State of Louisiana and had complete jurisdiction of said cause on the appeal, and the said final decision and decree were and are conclusive with respect to the State of Louisiana and to the said association in liquidation and with respect to all persons whomsoever, more particularly with respect to complainant, William Cressey, claiming or deriving from or through the said State or the association. A copy of said judgment and decree is annexed hereto as Exhibit Lord No. 1 and made a part of that answer.

III.

That the said president and directors, the liquidators of said association, all of whom were State officers, appointed under and by authority of the act No. 20 of 1878, extra session, on or about the 13th July, 1883, brought suit in the civil district court for the parish of Orleans, No. 8594 of the docket, against Armand Darcantel, one of the defendants herein, who was the owner of 264 shares of the stock of said association, which he acquired, with the property

mortgaged to secure them, on the 24th January, 1878, to recover of him a contribution of $150 per share, levied by the said
130 president and directors, and to enforce the stock mortgages assumed by said Darcantel in the notarial act of 24th January, 1878, by which the property mortgaged and the shares of stock were conveyed to him, which said contribution was levied under and by authority of the act No. 78 of 1882.

That the attorney general actively participated in said suit in behalf of the association and the State.

That before the said Darcantel acquired the property mortgaged and the shares of stock his predecessors, the authors of his title, had paid the entire debt for loans granted on said shares and the entire contribution levied under the act No. 100 of 1847, and the question to be determined in said suit was whether the said Darcantel was liable for additional contribution, against which he plead prescription and the settlement made under the said act of 1847 as a complete defence and bar to the demand of plaintiffs, and the said Darcantel also plead in reconvention the extinguishment of the stock mortgages assumed by him and demanded the cancellation and erasure of the inscriptions of said mortgages and of his assumption of them.

That such proceedings were had in said suit that final judgment was rendered on the 17th, signed on the 22d, April, 1884, on the merits, in and by which the demand of plaintiffs was rejected and dismissed, and upon the reconventional demand of defendant Darcantel there was judgment in his favor ordering and decreeing that the inscriptions of the stock mortgages and the assumption of the said mortgages by said Darcantel be cancelled and erased, which was done accordingly on the 7th May, 1884, pursuant to
131 said judgment.

That the said civil district court was a competent judicial tribunal of the State of Louisiana, and had complete jurisdiction of said suit and of the reconventional demand of defendant Darcantel; that the State of Louisiana and the Consolidated Association in liquidation and all persons whosoever, more particularly the complainant, William Cressey, claiming or deriving from or through the said State or the said association are barred and forever precluded by said proceedings and judgment. A copy of said judgment is herewith filed as Exhibit "Darcantel A" and made a part hereof.

IV.

That the right to call upon the stockholders for contribution, if it ever existed, accrued when the association become notoriously insolvent; that the said association became notoriously insolvent and ceased to be a going corporation when the decree of forfeiture of the charter was rendered, in November, 1842; that the charter was never revived; that the liability of the stockholders could not at any time have exceeded such amount as would have been sufficient to supply the deficiency of assets; that the act No. 100 of 1847 required the managers and directors to levy a contribution which would be suf-

ficient to supply such deficiency; that they had no power or authority to levy any other than such contribution as would be sufficient to supply that deficiency, which was found to be at that time about $500,000; that the contribution levied, $102 per share, was $112,000 in excess of the ascertained deficiency; that the stockholders, in the settlement made pursuant to the said act of 1847, admitted
132 their liability to contribute to the extent of the $102 per share, which was fixed and accepted as sufficent by the State, by the association in liquidation, and by the holders of the bonds of the State, and the levy of this contribution exhausted the right and power of the State, of the association in liquidation, and of the bondholders to call upon the stockholders to contribute for the payment of the debts of the State and of the association, and is a complete bar to any call upon the stockholders for additional contribution.

V.

That more than thirty years had elapsed when the present suit was brought since the right to call upon the stockholders for contributions accrued, and that right is now extinguished and forever barred by the lapse of time and by the prescription established by the laws of the State of Louisiana, which prescription these defendants specially plead and rely upon, to wit, the prescription of ten and thirty years.

VI.

That from the date of the decree of forfeiture of the charter the liquidation of the affairs of the Consolidated Association has been controlled by the State of Louisiana; that the liquidation has been extravagant and wasteful; that the sums of money contributed and paid by the stockholders, with the other assets of the association, if they had been properly administered and applied, would have sufficed to extinguish the entire endebtedness of the association;
133 that said contributions and assets have been squandered in salaries, fees, and costs, and that any deficiency which may now be found to exist results from the fault, mismanagement, maladministration, and neglect of duty on the part of officers of the State, for which the State of Louisiana alone is responsible.

VII.

That from the date of the decree of forfeiture of the charter, in November, 1842, the State has claimed the right of possession and the pledge of the assets and the control of the management and liquidation of the affairs of the association; that since this protracted liquidation commenced the slaves, representing about one million of dollars of the value of the property mortgaged to the association by the stockholders, have ceased to be property; that the real estate mortgaged to the association by the stockholders has greatly diminished in value; that so much of the contribution levied under the act of 1847 and of the debts due the association as may remain unpaid and be lost so remains unpaid and has been lost by

the fault and neglect of duty of the State and its officers, and it would be contrary to equity and good conscience to require the stockholders, more particularly these defendants, owners of the real estate so mortgaged, to supply any deficiency of assets which may now be found to exist.

VIII.

That the bonds and annexes and coupons sued on and filed as exhibits herein are subject to the prescription established by
134 the laws of the State of Louisiana, more particularly by articles 3540 and 3544 of the Revised Civil Code.

That all of the said bonds sued on were extended under the act No. 100 of 1847 and were made payable by fifths on the 30th June of the years 1854, 1857, 1860, 1863, and 1866, respectively; that three of the fifths due on each of said bonds on the 30th June of the years 1854, 1857, and 1860 were paid as they became exigible, leaving unpaid only the two-fifths exigible on the 30th June of 1863 and 1866, respectively.

That there was no subsequent extension of the bond, No. 382, sued on, and at the time this suit was brought more than twenty years had elapsed, reckoning from the day when the fifth due 30th June, 1863, was payable, and more than seventeen years had elapsed, reckoning from the day when the fifth due on the 30th June, 1866, was payable.

That the other two bonds sued on, Nos. 1034 and 1199, were extended under the act No. 38 of the Legislature of the State of Louisiana in the year 1866, and the two-fifths of each of said two bonds last mentioned remaining unpaid were made payable, by fourths, on the 30th June of the years 1870, 1872, 1874, and 1876, respectively; that before this suit was brought three of these fourths due 30th June of the years 1870, 1872, and 1874, respectively, had been paid, leaving unpaid only the last of these fourths—that is, the fourth on each of said bonds due and payable 30th June, 1876.

That at the time this suit was brought more than seven
135 years had elapsed, reckoning from the day when the said fourths due 30th June, 1876, were payable.

That all of said bonds and annexes and coupons are effects negotiable or transferable by indorsement or by delivery; that any action on said bonds and annexes and coupons is prescribed by the lapse of five years, reckoning from the day when they were payable, according to the express terms and provisions of the Revised Civil Code, article 3540, and of the Civil Code, article 3505.

That all personal actions not subject to shorter prescription are prescribed by the lapse of ten years, reckoning from the date at which the right of action accrued, and these defendants do, each and all of them, specially insist and rely upon and plead the prescription of five years and the prescription of ten years as an extinguishment of so much of the suit and demand of William Cressey, the complainant, as is based or is dependent upon the aforementioned bond No. 382 or upon the annexes and coupons appertaining to the same.

And these defendants do, each and all of them, specially insist and

rely upon and plead the prescription of five years as an extinguishment of so much of the suit and demand of William Cressey, the complainant, as is based or is dependent upon the aforementioned bonds Nos. 1034 and 1199 or upon the annexes and coupons to the said bonds, respectively, or to either of them appertaining.

136 IX.

That at the time this suit was brought more than forty years had elapsed, reckoning from the date of the judicial decree of forfeiture of the charter of the Consolidated Association, by which the insolvency of said association became notorious, and these defendants do, each and all of them, specially insist and rely upon and plead the staleness of the demand and the prescription of ten years as an extinguishment of the demand and suit of William Cressey, the complainant, to compel contribution for the payment of the debts of the said association.

X.

That under the funding act No. 3 of 1874 the State has funded the greater part of the outstanding bonds originally issued in aid of the association by giving new bonds at the rate of sixty cents in new bonds for one dollar of the original bonds, the new bonds bearing 7 per cent. interest instead of the 5 per cent. stipulated in the original bonds, the said new bonds being payable in the year 1914; that the State has thereby novated the said original bonds and has extinguished the indebtedness evidenced by said bonds, and the stock mortgages and all assumptions of the same have also been extinguished to the extent of the extinguishment of the original bonds by the giving of the new bonds in exchange for them.

XI.

That the liability of the stockholders upon their stock mortgages was directly to the association and only indirectly
137 to the State, as guarantors, for the reimbursement of the bonds of the State issued in aid of the association, and the complainant, William Cressey, has no right or claim whatsoever against these defendants or any of them save and except such as he may have derived from or through the State and the association in liquidation; that by reason and by means of the matters of defense hereinbefore set forth and alleged all right of action by the State or by the association in liquidation had become barred and extinguished as against these defendants before this suit was brought; that all the defenses which would have been available to defendants as against the State or as against the association in liquidation are equally available in the present suit as against the complainant, William Cressey; and these defendants do specially rely upon and plead all the defenses available to them as against the State and the association in liquidation as a complete defense to the suit and demand of William Cressey, the complainant.

XII.

These defendants do not admit—on the contrary, from information on which they rely they do verily believe and so allege and say—that the said William Cressey is not now, and that he was not at the time this suit was brought, the real beneficial holder and owner of the bonds sued on; that he was and is merely a person interposed who has collusively allowed his name to be used as complainant herein for the benefit of the real beneficial owner for the pur-
138 pose of giving to this court apparent jurisdiction, which it would not have had, by reason of the citizenship of the parties, if the suit had been brought in the name of the real beneficial owner.

That these defendants do not know at what time the said bonds came into the possession or under the control of the said William Cressey, but they are informed, do verily believe, and so allege and say that one A. L. Redden had the said bonds in his possession and was apparently the owner of them at the time the decision of the supreme court of Louisiana was rendered, on the 23d April, 1883, in the suit of The President and Directors of the Consolidated Association *vs.* George Josiah Lord, hereinbefore more specially mentioned and referred to; that the said bonds were at that time barred by prescription; that the said decision of the supreme court of Louisiana was a matter of public notoriety; that said Redden was at that time and is now a citizen of the State of Louisiana; that said bonds had been prescribed by the lapse of time, and that they were placed in the possession or subject to the control of said William Cressey, a short time before the present suit was brought, for the purpose of giving this court, fictitiously, apparent jurisdiction and in the hope of evading the force and effect of the decision of the supreme court of the State of Louisiana in the aforementioned suit of The President and Directors *vs.* George Josiah Lord, by which the State and the association in liquidation were concluded and forever barred against any demand upon the stockholders for further contribution.

139 XIII.

That by the charter of the Consolidated Association the capital stock consisted of eight thousand shares, of which the State owned two thousand shares and the individual stockholders owned six thousand shares; and, if said stockholders are liable to contribution for the payment of the debts of the association and of the State upon the bonds sued on, which they deny, these defendants aver that their liability must be estimated upon the basis of eight thousand shares, the number fixed by the charter, and that they are not liable for more than their *pro rata* thus estimated.

XIV.

And these defendants further allege and say that few, if any, of the original stockholders are now living; that the property originally mortgaged to the association has passed to the heirs and suc-

cessors of the original mortgagors, or to purchasers in good faith, for the full market value, with the belief that the extent of the liability of the stockholders to contribute upon their shares of stock had been finally fixed and settled, under and in accordance with the terms and provisions of the act No. 100 of 1847; that the stock of the association had no market value after the decree of forfeiture of the charter in November, 1842, and that the shares were sold or passed by will or by inheritance as a mere valueless appendage to the property mortgaged to the association by the subscribers to the stock.

That the bonds of the State issued in aid of the associa-
140 tion had but small value in the market after the extension of payment under the said act of 1847; that they have had merely a speculative value and were bought and sold in the market at figures far below their face value; that few, if any, of said bonds are now in the hands of original owners; that the liquidation of the affairs of the association for more than forty years past, reckoning from the decree of forfeiture of the charter, has been controlled by the State of Louisiana in its own interest and for its own convenience without agency or interference on the part of these defendants or any of them, and it would be contrary to equity and good censcience to require these defendants now to contribute for any deficiency of the assets which may now be found to exist after the lapse of so many years of neglect of duty, of maladministration, of mismanagement and waste on the part of the State and its officers.

XVI.

That the eighteenth and last instalments of the loan debt, as settled under the act No. 100 of 1847, were payable on the first of June, 1865, and the previous instalments were payable annually, the first on the first of June, 1848; that the seventeenth instalments of the contribution levied under the said act of 1847 were payable on the first of June, 1865, and the previous instalments were payable annually, the first on the first of June, 1849, in accordance with section 6 of said act, and the settlement made pursuant to its terms and provisions; that this suit to enforce payment of any of said
141 instalments, whether of the stock loan debt or of the contribution levied under said act of 1847, is stale and barred by prescription, more particularly by the prescription of five years and of ten years, reckoning from the day when the said instalments respectively were payable.

That these defendants were not nor was any one of them an original stockholder of said association; that they had nothing to do either with the passage of the act No. 100 of 1847 nor the settlement made under it; that except as hereinafter stated they do not know what instalments, if any, either of the stock loan or of the contribution levied under the said act of 1847, may still remain unpaid; but they do, each and all of them, insist and rely upon the prescription of five years and of ten years as an extinguishment of so much of the suit and demand of complainant, William Cressey, as may seek to enforce as against these defendants or any of them payment

of or liability for any of such instalments, whether of the loan debt or of the contribution levied under the said act of 1847 and whether any of such instalments as may now remain unpaid have or have not been specially assumed by defendants or by any of them respectively and severally.

XVII.

These defendants, each for himself, severally denies that he is in any manner whatsoever indebted or liable to the complainant, William Cressey, or to the State of Louisiana, or to the Consolidated Association of the Planters of Louisiana, in liquidation, by rea-
142 son of any of the matters and things in the original and amended bills of complaint of said William Cressey, or in the intervention of the State of Louisiana contained and set forth, or in the answer of Robert W. Adams and others, the president and directors of the said association, herein filed and exhibited.

And now, having fully answered, as well to the original and amended bills of complaint of William Cressey, complainant, as to the interrogatories by him to defendants propounded, these defendants pray to be hence dismissed with their costs in this behalf expended.

R. H. MARR,
ROUSE & GRANT,
JULES LAVERGNE,
Solicitors for Defendants.

Barthelmy Beaubey, being duly sworn, deposes and says that the matters and things stated in his foregoing answer to the original and amended bills of complaint of William Cressey, complainant, and to the interrogatories to defendants propounded are true, so far as stated of his own knowledge, and that so far as stated upon information he believes them to be true.

(Signed) B. BEAUBEY.

Subscribed and sworn to before me, at the city of New Orleans, La., this 19th day of November, A. D. 1884.

[SEAL.] (Signed) T. WHARTON COLLENS,
Notary Public.

(And all the other appellees made like affidavit to the truth of their several answers.)

143 *Answers to Interrogatories by Berthelemy Beaubay.*

To the interrogatories propounded by complainant Barthelmy Beaubay, one of the defendants, separately answers as follows :

To the first interrogatory. I have never owned nor have I ever assumed to pay any share or shares of the capital stock subscription of the Consolidated Association of the Planters of Louisiana.

To the second interrogatory. I have never been indebted to said Consolidated Association in any sum or sums of money for any loan

or loans of money made to me by said association on any mortgage or mortgages of real estate. At a public sale made by the sheriff of the parish of Orleans under and by virtue of a writ of seizure and sale issued by the late sixth district court for the parish of Orleans, at the suit of Barthelmy Beaubay *vs.* Joseph Barnes, No. 4287 of the docket of said court, which sale was made on the 22 of March, 1873, I became the purchaser of and acquired certain real property situate in the second district of the city of New Orleans, which property is fully described in the sheriff's deed to me, dated the 4th of April, 1873. This property had been originally mortgaged by Charles Coffin and wife to the Consolidated Association of the Planters of Louisiana to secure sixty-seven shares of the capital stock of the said association. Subsequently the share of stock secured by the mortgage of Coffin and wife on this property were reduced to 57 shares. The property was sold to Mrs. Amelie Zacharie Saul,
144 widow of Horace C. Commack, who took the reversion of the said mortgage to the extent of 57 shares and the proportion of the loan debt due by Coffin and wife by act before T. Guyol, notary, of date 13 June, 1862. Afterwards Mrs. Widow Cammack sold the property to Joseph Barnes, who assumed to pay the balance due by his vendor to the amount of $4,889.92. At the time of the aforementioned sale by the sheriff and purchase by me there remained of the balance assumed by Joseph Barnes in the act of sale to him passed before Ducatel, notary, of date 28 June, 1869, the sum of $2,565.04, represented by four notes or obligations of Widow Cammack, all dated 18 May, 1867, payable to the order of the cashier of the Consolidated Association of the Planters of Louisiana—one for $698.56, payable 1 June, 1873; one for $660.36, payable 1 June, 1874; one for $622.16, payable 1 June, 1875; one for $583.96, payable 1 June, 1876; that the mortgage in my favor granted by Joseph Barnes, under which the writ of seizure and sale issued in virtue of which the property was sold and adjudicated to me, was second in rank to that in favor of the Consolidated Association, and I assumed as part of the price of the adjudication to me the four obligations of Widow Cammack, above mentioned, aggregating $2,565.04, which I paid in full as they respectively became due. I have not, otherwise than as I have just stated, assumed or become liable to pay any loan or loans made to others than myself. I annex the sheriff's
145 deed to me as part of this answer and refer to it specially for a full description of the property and as the evidence of the nature and extent of the only obligation which I ever contracted to or with respect to the Consolidated Association of the Planters of Louisiana.

To the third interrogatory. I own now and have owned since the purchase by me at sheriff's sale on the 22 March, 1873, the property so purchased by me, which was mortgaged originally to secure 67 shares, afterwards reduced to 57 shares, of the capital stock of the said association. I have never owned or possessed any other property mortgaged to said association. I can give no description of the property which would not be a mere transcription from the sheriff's deed annexed to the preceding answer, and I refer to that

deed for a full description of the property and a complete answer to so much of this interrogatory as requires me to state when and how I became the owner or possessor thereof.

Answers of the Citizens' Bank to Interrogatories.

To the interrogatories by complainant propounded the Citizen's Bank of Louisiana, one of the defendants, answers:

To the first interrogatory and to each and every part and branch thereof defendant answers no, except as hereinafter stated in answer to the third interrogatory.

146 To the second interrogatory and to each and every part and branch thereof defendant answers no, except as hereinafter stated in answer to the third interrogatory.

To the third interrogatory. The Citizens' Bank owns and possesses but one property which was mortgaged to the Consolidated Association of the Planters of Louisiana—that is, a sugar plantation in the parish of Iberia, formerly the parish of St. Mary—which Charles Olivier and his wife mortgaged to the said Consolidated Association by act of 30 April, 1830, to secure forty-seven shares of the capital stock of said association, which property said Olivier and his wife subsequently mortgaged to the said association by act of 4 June, 1839, to secure a stock loan of $11,750. The Citizens' Bank acquired this property and the 47 shares of stock, which were an appendage to the property, at sheriff's sale in the succession of Charles Olivier and wife on the 4 November, 1871. Subsequently the bank sold this property to McCowen and McGill, and in the suit of the Citizens' Bank *vs.* McCowen and McGill the property was adjudicated to the bank at sheriff's sale on the 7 February, 1874. The two sheriff's deeds above mentioned are herewith filed and specially referred to for a full description of the property so acquired and now owned by the bank, this defendant. The entire stock loan and all of the contribution of $102 per share levied under act No. 100 of 1847 on the aforementioned forty-seven shares of stock have been paid in full by the predecessors and authors of the title of the Citizens' Bank.

147 *Answers of Chas. Getzinger to Interrogatories.*

To the interrogatories propounded by complainant Charles Getzinger, one of the defendants, answers:

To the first interrogatory. I have not at any time assumed to pay any share or shares of the capital stock subscription of the Consolidated Association of the Planters of Louisiana. I own the undivided half of 109 shares of the capital stock of said association, which I acquired from Joseph Getzinger by act before Gottschalk, then a notary, of New Orleans, of date 23 June, 1870. Henry Hart owned 109 shares of the capital stock subscription of said Consolidated Association and a plantation in the parish of Jefferson, right bank of the Mississippi river, which his predecessors had mortgaged to the said association to secure the 109 shares and stock loans to be allowed on them. On the 23 Feb'y,

1866, Hart paid the entire balance of stock loan and of contribution levied under the act No. 100 of 1847, aggregating in principal and interest the sum of $13,219.14 paid to said association. Subsequently Hart sold this plantation and the 109 shares of stock to John Salvant by act before Edward Barnett, then notary, of New Orleans, of date 31 October, 1867. By act before Gottschalk, then notary,
148 of New Orleans, of date 12 Nov'r, 1868, Salvant sold one undivided half of this plantation and of the 109 shares of stock to Joseph Getzinger. By act before the same notary, of date 23 June, 1870, Joseph Getzinger sold to me this undivided half of the plantation and of the 109 shares of stock. At a sale by the sheriff of the parish of Jefferson, under executory process issued by the second judicial district court of Jefferson parish at the suit of Charles Getzinger *v.* The Succession of John Salvant, No. 3973 of the docket, made on the 14 October, 1872, the undivided half of the said plantation was adjudicated to me which had belonged to John Salvant, so that I became the owner of the entire plantation. The undivided half of the 109 shares which had belonged to Salvant was not sold by the sheriff and is not mentioned or conveyed to me by the sheriff's deed. I file herewith copy of the act of 23 June, 1870, in and by which I acquired one undivided half of the aforementioned plantation and of the 109 shares of stock, and the sheriff's deed to me of date 14 October, 1872, in and by which I acquired the other undivided half of said plantation alone.

To the second interrogatory. I have never at any time been indebted to said Consolidated Association in any sum or sums for any loan or loans of money made to me by said association on any mortgage or mortgages of real estate, and I have not at any time assumed or become liable to pay any such loan or loans made to others than myself.

149 To the third interrogatory. I now own and possess the plantation which was mortgaged to the Consolidated Association of the Planters of Louisiana to secure the 109 shares of stock aforementioned. I became the owner by purchase at the dates and in the manner stated and set forth in my foregoing answer to the first interrogatory and in the act of 23 June, 1870, and in the sheriff's deed to me of 14 October, 1872, both of which are already herewith filed, and I here specially refer to the said act and to the sheriff's deed for full description of the property so owned and possessed by me. In the sheriff's deed the stock and loan mortgages are recited and the dates given. I do not own and I do not possess any other property or properties mortgaged to the said Consolidated Association for any purpose whatever, so far as I know and believe.

Answers of Bernard Lemann, Meyer Lemann, and Richard T. Hanson to Interrogatories.

To the interrogatories propounded by complainant Bernard Lemann, Meyer Lemann, and Richard T. Hanson, defendants, answer:

To the first interrogatory. We have not nor has any one of
150 us owned or assumed at any time to pay any share or shares

of the capital stock subscription of the Consolidated Association of the Planters of Louisiana.

To the second interrogatory. We have not nor has any one of us at any time been indebted to the said Consolidated Association in any sum or sums for any loan or loans of money made to us or to any one of us by said association on any mortgage or mortgages of real estate, and we have not nor has any one of us ever at any time assumed or become liable to pay any such loan or loans made to others than ourselves.

To the third interrogatory. We now own and possess equally and in division a certain sugar plantation which, with 70 shares on it, was mortgaged to the said association by Francois Marie Laferniere Levesque to secure the 124 shares of the stock of said association which belonged to him. Subsequently Miss C. E. P. Laferniere became the owner of this plantation, and by act before De Armas, notary, of New Orleans, of date 21 February, 1854, she assumed the responsibilities of a stockholder to the extent of the 124 shares. Under and by virtue of a writ of seizure and sale issued in the suit in the U. S. circuit court at New Orleans, No. 5298 of the docket, entitled Miss C. E. P. Laferniere *v.* P. H. Foley and the succession of J. S. Wilson, the U. S. marshal seized the said sugar plan-
151 tation, and on the 10 October, 1867, he sold and adjudicated it to the plaintiff, Miss Laferniere. In the marshal's deed to her Miss Laferniere assumed, over and above the price of the adjudication, the obligations of a stockholder of 124 shares and the payment of three instalments of the loan debt and of the contribution under the act of 1847, which became payable, respectively, on the 1 of June, 1863, 1864, 1865. These defendants are informed that the aggregate of this indebtedness, with interest at eight per cent. included, was extended under the act of 1866 and divided into nine annual instalments, the first payable on the 1 June, 1868, the last on the 1 June, 1876, and that each and all of these instalments were paid by Miss Laferniere or by her representatives as they respectively became due and exigible.

Afterwards, by act before James Fahey, notary, of New Orleans, of date 9 March, 1877, the heirs of Miss Laferniere sold and conveyed this sugar plantation to defendant, Bernard Lemann, and by act before Sims, notary, of the parish of Ascension, of date 14 March, 1877, Bernard Lemann sold and conveyed to Meyer Lemann and Richard T. Hanson each one undivided third of said sugar plantation.

These defendants do not nor does either of them own and they are not nor is either of them in possession of any other property mortgaged to the Consolidated Association. They annex and file herewith copy of the act of 9 March, 1877, and of the act of 14 March, 1877, by which these defendants acquired the said sugar plantation, and they specially refer to these acts for a full description of said property and for complete information as to when and how we acquired the same.

152 *Answers to Interrogatories by Mrs. Geo. J. Lord.*

Elizabeth Eugénie Granet, one of the defendants, widow of George Josiah Lord, for additional and special answer to the original and amended bills of complaint of William Cressey, complainant, alleges and says—

That she adopts, and here specially refers to as if here repeated, all the allegations and statements made in the foregoing joint and several answer, touching and with respect to the suit and proceedings in the civil district court, No. 2662, and in the supreme court of the State of Louisiana, No. 8589, and the final decree of said supreme court rendered on the 23 April, 1883; and respondent files herewith and as parts of this answer, duly certified copies of the final decree of the supreme court of Louisiana on the appeal in the cause No. 8589, marked Lord No. 1, and of the judgment of the civil district court on the rule aforementioned in the suit No. 2662, marked Lord No. 2.

That, pending said appeal, George Josiah Lord died leaving a last will and testament by which he constituted this defendant his universal legatee and appointed her his testamentary executrix; that she qualified as executrix and caused herself in that capacity to be made party appellant in the said appeal No. 8589.

That after said final decree was rendered this defendant, in her capacity as testamentary executrix, took a rule in the said civil district court in the said suit No. 2662, on the recorder of mortgages,

153 the president and directors of the Consolidated Association of the Planters of Louisiana, the State of Louisiana, represented by the attorney general, and Henry Denis, Esq., representing holders of the bonds of the State issued in favor of said association, to show cause why the inscriptions of the original mortgage granted by Céleste Chabot to secure the said 22 shares of stock and of the reversions of said mortgage taken by successive purchasers of the mortgaged property and the assumption of said mortgage by George Josiah Lord should not be cancelled and erased upon the ground that no liability existed with respect to the said shares of stock or with respect to the stock mortgage and the reversions and assumption of said mortgage.

That the said rule was tried contradictorily with the persons and parties in the preceding paragraph mentioned—that is, the recorder of mortgages, the said Consolidated Association, the State of Louisiana, represented by the attorney general, and Henry Denis, Esq., representing the holders of certain bonds of the State; that such proceedings were had on said rule that final judgment of said court was rendered on the 19 Nov'r, signed on the 23 Nov'r, 1883, making the said rule absolute; and, in obedience to the said judgment, all of said inscriptions were cancelled and erased on or about the 6 Dec'r, 1883.

That the said civil district court was a competent judicial tribunal of the State of Louisiana and had complete jurisdiction of the said rule; that the judgment of said court on said rule has not been at-

tacked by appeal or otherwise, and that it is final and conclu-
154 sive against the said association in liquidation, against the State of Louisiana, and against William Cressey, the complainant.

And defendant further alleges and says that, on the faith of the decision and decree of the supreme court of the State of Louisiana on the appeal No. 8589, she accepted the succession of said George Josiah Lord, purely and simply, on the 28 May, 1883, and she alleges and says that the said decision and decree and the subsequent judgment of the civil district court on the aforementioned rule constitute *res adjudicata* and are a complete and final release and discharge of herself personally and of her property from any and all claim by the said Consolidated Association, by the State of Louisiana, and by the complainant, William Cressey, for contribution to pay any debt or debts of the said association or of the State of Louisiana, so far as this defendant is concerned.

And to the interrogatories propounded by complainant the said Elizabeth Eugénie Granet, Widow Lord, answers:

To the first interrogatory. I have not at any time assumed to pay any share or shares of the capital stock subscription of the Consolidated Asssociation of the Planters of Louisiana. I now own twenty-two shares of the capital stock of the said association. I have never owned any other shares. I acquired these 22 shares under and in virtue of the last will and testament of my now deceased husband,
George Josiah Lord, who died on the 18 March, 1883, and
155 whose succession was opened in the civil district court for the parish of Orleans, No. 8153 of the docket. George Josiah Lord acquired these 22 shares of stock, with the property originally mortgaged to secure them, by act before H. B. Cenas, late notary of New Orleans, of date 14 March, 1850, by which the Mechanics' and Traders' Bank of New Orleans sold and conveyed said property and shares of stock to him.

A copy of said act is herewith filed, marked Lord No. 3.

To the second interrogatory. I have not ever at any time been indebted to said Consolidated Association in any sum or sums for any loan or loans of money made to me by said Consolidated Association on any mortgage or mortgages of real estate, and I have not at any time assumed or become liable to pay any such loan or loans made to others than myself.

To the third interrogatory. I now own a property in the second district of the city of New Orleans, which was mortgaged by Céleste Chabot on the 20 October, 1836, to the said association to secure the subscription to 22 shares of the capital stock of said association. George Josiah Lord acquired this property by purchase and I acquired it as his universal legatee in the manner and at the time as stated in my foregoing answer to the first interrogatory. I here specially refer to the act mentioned in and filed with my said answer to the first interrogatory for a full description of said prop-
156 erty. The inscriptions of the mortgage of Céleste Chabot and

of the reversions taken and the assumption of that mortgage were cancelled and erased on the 6 December, 1883, in the manner and by the means stated in the joint and several answer and in my additional and special answer to the original and amended bills of complaint of William Cressey, and I do not now own or possess any property which is now mortgaged to the said Consolidated Association, as I am advised and do verily believe.

Answers to Interrogatories by Pedro Landreaux and Marie Louise Landreaux.

To the interrogatories propounded by complainant Pedro Landreaux and Marie Louise Landreaux, two of the defendants, answer:

To the first interrogatory. We have not nor has either of us assumed to pay any share or shares of the capital stock subscription of the Consolidated Association of the Planters of Louisiana. We own 202 shares of the capital stock of said association, which we acquired by inheritance from our deceased father, Pierre Landreaux, and his wife, our mother, Heloise Lavigne.

To the second interrogatory. We have not been at any time indebted to the said Consolidated Association of the Planters of
157 Louisiana in any sum or sums for any loan or loans of money made to us or to either of us by the said Consolidated Association on any mortgage or mortgages of real estate, and we have not nor has either of us ever at any time assumed or become liable to pay any such loan or loans made to others than ourselves. The entire indebtedness of our deceased father and mother to the Consolidated Association, as well for stock loan as for contribution under the act No. 100, of 1847, has been fully paid. We cannot state the exact time at which this indebtedness was paid, but all of it had been fully paid, acquitted, and discharged before the 21 February, 1867.

These respondents, by act before Ducatel, notary, of date 21 February, 1867, substituted for the property originally mortgaged by their said father and mother to the said Consolidated Association to secure the said 202 shares of the capital certain property in the city of New Orleans which they mortgaged to said association, in consideration of which the managers and directors, the liquidators of said association, granted to these respondents full release and discharge of the mortgage granted in favor of the said association by their said father and mother by act before Ducatel, notary, of date 16 December, 1840, to secure said shares of stock.

To the third interrogatory. We now own and are in possession of the property mortgaged by us to the said Consolidated Association
in lieu of the property originally mortgaged by our said
158 father and mother to the said association, which property so mortgaged by us is situate in the first district of the city of New Orleans. We are not in possession of and we do not nor does either of us own any property which is mortgaged to the said association, save and except that mortgaged by us to said association by the aforementioned act of 21 February, 1867. We file copy of that

act herewith for a full description of the property originally mortgaged, which was a sugar plantation and seventy shares, by our father and mother to the Consolidated Association and of the substituted property mortgaged by us to said association on the 21 February, 1867.

Answers to Interrogatories by Herman Meyer.

To the interrogatories propounded by complainant Herman Meyer, one of the defendants, answers:

To the first interrogatory. I have not at any time owned or assumed to pay any share or shares of the capital stock subscription of the Consolidated Association of the Planters of Louisiana.

To the second interrogatory. I have not ever at any time been indebted to the said Consolidated Association in any sum or sums for any loan or loans of money made to me by said Consolidated
159 Association on any mortgage or mortgages of real estate, and I have not at any time assumed or become liable to pay any such loan or loans made to others than myself.

To the third interrogatory. I now own and possess certain properties which were mortgaged to the said Consolidated Association to secure the subscriptions to certain shares of stock, as follows:

1st. By act acknowledged before Theo. Guyol, notary, of New Orleans, on the 12 May, 1879, Meyer, Weis & Co., of New Orleans, sold and conveyed to me a certain property, situate in the parish of Ouachita, in the State of Louisiana, now known as the "Emily Mason" place, which is fully described in the said act, copy of which is herewith filed. Since the date of this purchase I have been informed that on the 12 January, 1829, John Hughes subscribed for 10 shares of the capital stock of said association and mortgaged the said property to secure said 10 shares; that he was succeeded by his widow, Jane Hughes, and she by Emily Mason. I have also been informed that the entire loan debt on the said shares and the contributions levied under the act No. 100 of 1847 were fully paid before I acquired the property. In the sale to me by Meyer, Weis & Co. no mention whatever is made of this mortgage or of any incumbrance on the property.

2d. By act before Edgar Grima, notary, of New Orleans, of date 3 January, 1880, Henry Shepherd, of the State of West Vir-
160 ginia, sold and conveyed to me a property—cotton plantation—situate in the parish of Ouachita, known as "Ingleside," which is fully described in said act, copy of which is herewith filed. Since the date of this purchase I have been informed that on the 12 January, 1829, Oliver J. Morgan subscribed for 20 shares of the capital stock of said association and that he mortgaged said property to secure the same. I have also been informed that the entire loan debt and the contribution levied under the act No. 100 of 1847 were fully paid before I acquired the property. In the sale by Shepherd to me no mention whatever is made of this mortgage or of any incumbrance on the property.

3d. By act before Garrett, *ex officio* notary, of the parish of Oua-

chita, of date 13 December, 1880, Henry Frellson, then of New Orleans, now deceased, sold and conveyed to me a cotton plantation, situate in Ouachita parish, known as "Limerick," which is fully described in said act, copy of which is herewith filed. In the said act it is stated that the property is sold "subject to the mortgage in favor of the Consolidated Association of the Planters of La.," but no further reference to or mention of said mortgage is made in said act. I am informed that on the 12 January, 1829, Ferdinand Morgan subscribed for 16 shares of the capital stock of said Consolidated Association and mortgaged the said property to secure the same. I have also been informed that the entire loan debt and the contribution levied under the act No. 190 of 1847 were fully
161 paid before I acquired the property. I desire to add that the information which I have with respect to the original mortgages on the three properties hereinbefore mentioned was obtained from John Calhoun, receiver, &c., on the 19 March, 1885, by my attorneys.

Deed, Marked Exhibit Beaubay. Filed May 22, 1885.

Whereas I, W. P. Harper, sheriff of the parish of Orleans, by virtue of a writ of seizure and sale to me directed by the honorable the sixth district court for the parish of Orleans, at the suit of Barthelemy Beaubay *versus* Joseph Barnes, number 4287 of the docket of said court, after having fulfilled and complied with all the previous legal requisites, did seize the following-described property, to wit: One certain lot of ground situated in the second district of this city, in the square comprised within Royal, Hospital, Chartres, and Ursulines streets, designated by the number one on a plan dated the twenty-fourth February, 1837, and deposited in the office of Amedee Ducatel, a notary public in this city, as plan number three of the Book of Plans Number Two. Said lot of ground forms the corner of Royal and Hospital streets, and measures forty-six feet ten
162 inches front on Royal street by ninety feet deep and front on Hospital street, together with all the buildings and improvements, without exception or reservation, being the same property acquired by the defendant herein by purchase from Mrs. Amelia Zacharie Saul, widow of Horace C. Cammack, per act passed before said notary, Ducatel, on the twenty-eighth day of June, 1869; and, after having given due and legal notice to the said defendant of the seizure in the manner pointed out by law, I advertised the said before-described property for sale, after the expiration of the legal delay from the time of said notice, to wit, on the eighteenth day of February, 1873, by advertisements, composed in English, announcing the sale to take place at the Merchants' and Auctioneers' Exchange, on Royal street between Canal and Custom-House streets, in the second district of this city, on the twenty-second day of March, 1873, at 12 o'clock m. Said advertisements were inserted and published in English in one paper in the city of New Orleans, to wit, in the New Orleans Republican, from the said eighteenth day of February, 1873, to the day of sale, being full thirty days from the date

of the first notice given in said newspaper. Said advertisements were inserted and published in said newspaper on the 18th, 21st, 25th, 26th, — 28th of February, 4th, 7th, 9th, 12th, 14th, 19th, and 22d of March, 1873, in English, in the New Orleans Republican.

And, having further complied with and performed all the additional previous legal requisites, and after said property having been duly appraised, did expose the same at public sale ac-
163 cording to law, at the said Merchants' and Auctioneers' Exchange, on the said twenty-second day of March, eighteen hundred and seventy-three, at 12 o'clock m.; and at the same time and place of sale I did announce in a loud and audible voice the terms and conditions of sale hereinafter expressed and specified, and did read *verbatim*, in a loud and audible voice, the certificate of the recorder of mortgages for the parish of Orleans and city of New Orleans delivered on the day of sale, and by which certificate it appears that there are no other mortgages standing in the name of said defendant and recorded against said before-described property than the following, to wit:

1st. The draining privilege.

2d. B. 41, fo. 21; recorded 2d April, 1839.—The original mortgage granted by Charles Caffin and wife, per act of A. Ducatel, notary, dated 1st April, 1839, in favor of the Planters' Consolidated Association of Louisiana, to secure the sum of $33,500.00, am't of 67 shares in the capital stock of said bank, and $16,750.00 of loans, int., costs, &c., on the above-described property and another.

3d. B'k 78, fo. 347; recorded June 14th, 1862.—The reversion of said shares was taken by Mrs. Amelie Zacharie Saul, widow of Horace C. Cammack, per act of T. Guyol, notary, dated 13th June, 1862, and by said act she assumed to pay to the Consolidated Planters' Association $935.50, with interest thereon, being the proportion of stock loan due on the said 57 shares (portion of the original
164 67 shares as mentioned in first act) of stock and $342, contribution due thereon on 1st June, 1863; the same amounts with interest on 1st June, 1864, and the same amount with interest on 1st June, 1865. Said several amounts of stock loan and contribution have been apportioned to the 57 shares of stock, and the payment thereof secured by mortgage on said property, which mortgage was also assumed to the extent of said apportionment, and in order to represent the amounts of stock loans said purchaser has made three bonds, dated 13th June, 1862, and payable to the order of the cashier of said association—one for $1,131.95 on 1st June, 1863, composed of $935.50, or $\frac{1}{3}$ of the amount due on said shares, and $196.45, interest due to that date; one for $1,066.46 on the 1st June, 1864, composed of $935.50, or $\frac{1}{3}$ of said stock debt, and of $130.96, interest due at that date, and one for $1,000 on 1st June, 1865, composed of $935.50, or $\frac{1}{3}$ of said stock debt, and of $65.48, am't of interest thereon.

4th. B'k 87, fo. 603; recorded 29th June, 1869.—Finally, the assumption taken by said Jose Barnes, as per his act of purchase of the said property passed before A. Ducatel, notary, dated 28th June, 1869, up to the sum of $4,889.92, to pay in place and stead of his

vendor to the said association, being the balance in capital and interest up to the 1st June, 1876, to said institution on a certain loan originally made on the aforesaid 57 shares to Chas. Caffin and assumed by Mrs. Cammack, dated 18th May, 1857, with interest, costs, &c.

5th. B'k 93, folio 31; recorded July 25th, 1871.—The mort-
165 gage granted by said Barnes in favor of Chas. Ducros, per act of O. Drouet, notary, dated 21st July, 1871, to secure the sum of $6,500.00, int., costs, &c., now reduced to $4,000.00, int., costs, &c.

6th. B'k 92, fo. 303; recorded 5th Feb'y, 1872.—The one he granted in favor of Pedro Pons y Olivas, per act of same notary, dated 2d Febr'y, 1872, to secure the sum of $3,000.00, int., costs, &c.

7th. B'k 94, fo. 631; recorded Jan'y 14th, 1873.—The one he granted in favor of John F. Coffey, notary, dated 13th Jan'y, 1873, to secure the sum of $1,865.00, int., costs, &c.

8th. B'k 95, folio 251; recorded 27th Febr'y, 1873.—The lease he granted unto the board of public school directors, per act of John L. Laresche, notary public, 18th July, 1872, of the premises situated cor. Hospital and Royal streets, for the space of three years, to commence 1st July, 1871, up to the 30th June, 1874, the whole more fully expressed in said act.

9th. B'k 98, fo. 101; rec'd 4th Jan'y, 1873.—The privilege in favor of this State for taxes of 1871 on said property, am't'g to $322.50, int., costs, &c.

[Written on the margin:] Not paid and not cancelled.

No. 4205; B'k J. M. No. 14, fo. 755; recorded on the 24th Jan'y, 1873.—The general one in favor of G. E. Schmidt, resulting from a writ issued by the 6th district court on the 24th January, 1873, for the sum of $393.66, with interest stipulated in said writ, and costs of suit against Joseph Barnes (writ of attachment on said property).

[Written across the page:] Cancelled April 1, '73, by certificate of sheriff. Ernest Rickert, D. S.

No. 4228; B'k J. M. No. 14, fo. 759; recorded on the 27th
166 Jan'y, 1873.—The general one in favor of John G. Ryan, resulting from a writ issued by the 6th district court on the 27th January, 1873, for the sum of $1,144 and 75 cents, with interest stipulated in said writ, and costs of suit against the same (writ of attachment on same lot).

No. 4287; B'k J. M. No. 14, fo. 785; recorded on the 13th Feb'y, 1873.—The general one in favor of Barthelemy Beaubay, resulting from a writ issued by the 6th district court on the 13th Febr'y, 1873, for the sum of $4,000 and 00 cents, with interest stipulated in said writ of *fi. fa.*, and costs of suit against the same (on said property).

No. 4205; B'k J. M. No. 15, fo. 29; recorded on the 18th March, 1873.—The general one in favor of G. E. Schmidt, resulting from a judgment rendered by the 6th district court on the 12th March, 1873, for the sum of $389 and 66 cents, with interest stipulated in said judgment, and costs of suit against the same.

[Written across the page:] Cancelled April 1, 1873, by certificate of sheriff. Ernest Rickert, D. S.

No. 4403; B'k J. M. No. 15, fo. 34; recorded on the 21st March, 1873.—

The general one in favor of S. Hernsheim & Bro., resulting from a judgment rendered by the 6th district court on the 17th March, 1873, for the sum of $1,816 and 24 cents, with interest stipulated in said judgment, and costs of suit against the same; and at the time and place of sale I did read *verbatim* and in a loud and audible voice the certificate of the register of conveyances in and for the parish of Orleans, State of Louisiana, delivered on the day of
167 sale, and by which certificate it does not appear that said defendant has alienated said before-described property (registered in Book 94, folio 776), when, Barthelemy Beaubay being the highest and last bidder, the said before-described property was adjudicated to the said Barthelemy Beaubay for the price and sum of six thousand dollars ($6,000.00), payable on the following terms: The purchaser to assume the payment of the following bonds or notes due to the Consolidated Association of the Planters of Louisiana, and secured by mortgage on the aforesaid property, to wit: One for six hundred and ninety-eight dollars and fifty-six cents, payable June 1st, 1873; one for six hundred and sixty dollars and thirty-six cents, payable June 1st, 1874; one for six hundred and twenty-two dollars and sixteen cents, payable June 1st, 1875, and one for five hundred and eighty-three dollars and ninety-six cents, payable June 1st, 1876, making the aggregate sum of two thousand five hundred and sixty-five dollars and four cents, and the balance or surplus of said purchase price to be paid cash on the spot, and which was settled for in the following manner, to wit:

First. The purchaser has assumed the payment of the four several bonds or notes due to the Consolidated Association of the Planters of Louisiana, as specified in the foregoing terms of sale, amounting to the aggregate sum of two thousand five hundred and sixty-five $\frac{4}{100}$ dollars	$2,565 04
Am't carried forward	2,565 04
168 Am't brought forward	2,565 04
Second. The said purchaser has paid in cash the costs and charges of the above-entitled suit, amounting to the sum of three hundred and forty-nine $\frac{71}{100}$ dollars	349 71
Third. The said purchaser has retained in his hands, to be by him applied to the payment of the State and city taxes of 1871 and 1872 and the draining due on said property, amounting to the sum of one thousand three hundred and fifty-four $\frac{50}{100}$ dollars	1,354 50
Fourth. And the purchaser, being the plaintiff in the above suit and holder of the mortgage (the second in rank) under which this sale was made, has retained in his hands, on account of his claim and of said mortgage, the balance of the price of adjudication, amounting to the sum of one thousand seven hundred and thirty $\frac{75}{100}$ dollars	1,730 75
Amount of sale	$6,000 00

Said purchaser (plaintiff) binding and obligating himself to pay or cause to be paid all, any, and every taxes on the property herein sold, thereby exonerating the sheriff from all, any, and every responsibility in the premises:

Now, therefore, know all men by these presents that I, the said sheriff, in consideration of the premises and by virtue of the laws of the State of Louisiana in such cases made and provided, do sell and transfer the said before-described property to the
169 said Barthelemy Beaubay, and all the right and title which the said defendant had in or to the said before-described property; to have and to hold the same to the said Barthelemy Beaubay, his heirs and assigns, forever.

In witness whereof I have hereunto signed my name, at New Orleans, in the State of Louisiana, this fourth day of April, in the year one thousand eight hundred and seventy-three (1873) and the ninety-seventh year of the Independence of the United States of America.

Seven words erased as null. The words "writ issued," "writ," "writ issued," writ of *fi. fa.*, interlined, approved.

(Signed) M. WALSH,
Deputy Sheriff of the Parish of Orleans.

Signed in presence of the following competent witnesses:
(Signed) MICH'L DE ARMAS.
ERNEST RICKET.

Registered in Conveyance Book 100, fols. 705 & 706.
New Orleans, April 8th, 1873.
[SEAL.] (Signed) C. B. FISH, *D. R.*

Sixth District Court for the Parish of Orleans.

CLERK'S OFFICE,
NEW ORLEANS, LA., *April 10th*, 1873.

I hereby certify that the within deed of sale was recorded this day in this office in "Deed Book" "No. 5," on folios 283, 284, 285, 286, 287, 288, 289, and 290.

[SEAL.] (Signed) GEO. L. BLOOMFIELD, *D'y Cl'k.*

170 *Sheriff's Deed, Marked Citizens' Bank No. 1. Filed May 22, 1885.*

STATE OF LOUISIANA, *Parish of Iberia:*

District Court.

CITIZENS' BANK OF LA.
vs.
McCOWAN and McGILL. } No. 340.

Be it known that on this 7th day of February, A. D. 1874, by virtue of a writ of seizure and sale issued out of the honorable the 3d judicial district court, holding session in and for the parish of

Iberia, and dated 30th day of December, A. D. 1873, I, A. L. Hayes, sheriff, duly qualified as such, in and for the parish of Iberia, after advertising in the "Iberia Progress," the official journal, published in the town of New Iberia, parish aforesaid, from the 30th day of December, A. D. 1873, to the 7th day of February, A. D. 1874, proceeded to sell at public auction, to the last and highest bidder and on terms and conditions hereinafter mentioned, the property belonging to Miss McCowan and McGill, seized and sold by virtue of the above-mentioned writ in case of Citizens' Bank of La. *vs.* McCowan and McGill, and numbered 340 of the docket of said court, the terms having been made known, which was that the purchaser furnish a stock note for the sum of $3,120, payable the 1st day of May, 1874, renewable according to charter of Citizens' Bank, he to assume the obligation and responsibility of a stockholder of said bank, said note to be identified with mortgage of C. Olivier and wife to the
171 Citizens' Bank, dated 4th day of September, A. D. 1837, with sale from Citizens' Bank to McCowan and McGill, dated 1st day of February, A. D. 1872, and with sheriff's deed and mortgage.

2d. Purchaser to furnish note for $8,640, to his own order and by him endorsed, payable the 7th of December, A. D. 1874, with 8 % interest from date, with privilege of extending same two years from maturity by paying accrued interest and one-half of capital of said note, secured by mortgage and identified with said above-mentioned acts and with sheriff's deed, with mortgage reserved; the balance of price of adjudication cash. The said hereinafter-described property was offered for sale in block as aforesaid, and, after crying said sale as required by law, I, the said sheriff, adjudicated the same to the Citizens' Bank of La. for the sum and price of twenty-two thousand and twenty dollars, said amount being two-thirds of the appraisement. Said bank being a creditor of McCowan and McGill for a larger amount than price of adjudication, the said property was adjudicated to said bank for said price. Said property so adjudicated consists of, 1st, lot A 1, with a front of six arpents on the west side of the — Teche by forty in depth, and lot A 2 being south half, more or less, of land confirmed to Solomon Andrews on east side of said bayou, containing three hundred superficial arpents; 2d, lot B 1, measuring six and $\frac{44}{100}$ arpents front on west side of Bayou Teche, adjoining lot A 1, with forty arpents in depth, and lot B 2 being north half, more or less, of land confirmed to Solomon Andrews on the east side of said bayou, containing three hundred superficial arpents;
172 3d, lot C 1, measuring three and $\frac{64}{100}$ arpents front on west side of Bayou Teche adjoining lot B 1 by forty arpents in depth, and lot C 2, measuring three and one-half arpents front on east side of said Bayou Teche, opposite lot C 1, with depth of forty arpents; 4th, lot D 1, measuring three and $\frac{69}{100}$ arpents front on west side of Bayou Teche adjoining lot C 1 with forty arpents in depth, and lot D 2, on the east side of Bayou Teche, measuring three and one-half arpents front on said bayou, all situated in the parish of Iberia and containing sixteen hundred and seventy-two and four-fifths superficial arpents, more or less, together with all the buildings, machin-

ery, stock, horses, mules, and farming utensils, and all other things and appurtenances thereto attached; also (224) two hundred and twenty-four shares of the mortgage stock of the Citizens' Bank of La. thereto attached, said landed property being so divided into lots by a survey made by O. Valery Martin on the 6th day of March, A. D. 1871, a plan of which is deposited at the Citizens' Bank in New Orleans and which is referred to, said bank paying all costs (except keeper's dues, said fees being left open for further settlement) and amounting to two hundred and thirty-seven $\frac{75}{100}$ dolls., and, being judgment creditor for a larger sum than the price of adjudication, retained said amount in her possession—say twenty-one thousand seven hundred and eighty-two $\frac{25}{100}$ dollars.

Now, know ye that I, the said A. L. Hayes, the sheriff aforesaid, by virtue of said writ and of the statute in such case made and provided, and in consideration of the said sum of twenty-two
173 thousand and twenty dollars, said as aforesaid, do bargain, sell, and deliver unto the said Citizens' Bank of Louisiana and to its legal representatives and assigns forever the property above described, and all the right, title, and interest which the said McCowan and McGill had in the said property on the day of the seizure thereof or at any time since had or now have; to have and to hold the said property unto the said Citizens' Bank of La., their legal representatives and assigns, forever as fully as I, the said sheriff, under the authority aforesaid, might, could, or ought to sell and convey same.

In witness whereof I have hereunto set my hand in my official capacity, at the parish of Iberia, this seventh day of February, A. D. 1874.

(Signed) A. L. HAYES, *Sheriff.*

Signed in the presence of competent witnesses:
(Signed) L. J. McGAFFEY,
LOUIS De BLANC.

Recorded in Book 1 Sheriff's Sale, folios 82 to 84.
[SEAL.] (Signed) N. P. HACKER, *D'y Cl'k.*

PARISH OF IBERIA, RECORDER'S OFFICE.

I hereby certify that the foregoing is duly recorded in Book No. 1 of Judicial Sales, page 139, entry 65, inscribed therein this day.

In testimony whereof witness my signature and official seal this ninth day of February, 1874.

[SEAL.] (Signed) LOUIS De BLANC,
D'y Recorder.

174 *Order of Seizure and Sale, Marked Citizens' Bank No. 2. Filed May 22, 1885.*

STATE OF LOUISIANA:

Parish Court, Parish of St. Mary.

Estates of CHARLES OLIVER and WIFE.

Deed.

No. 1088.

To Clermont Young, sheriff of the parish of Iberia:

Pursuant to orders granted by the Hon. Jas. H. Handy, parish judge of the parish of St. Mary, on the 3rd day of April, 1871, and to an order granted by the Hon. A. Garrigens, parish judge of the parish of St. Landry, on the 7th day of September, 1871, you are hereby commanded to sell, at public auction, on the terms and conditions hereinafter mentioned, after the delays and advertisements prescribed by law, the following-described property belonging to said estates, as per plan made thereof by Simeon Valery Martin, surveyor, dated —— —, 1871, viz:

1st. A lot composed of the following tracts, viz: "Lot A 1, measuring — arpents front on Bayou Teche, on the west side of said bayou, by — arpents in depth, and lot A 2, being the south half, more or less, of the land confirmed to Solomon Andrews, on the east side of said Bayou Teche, measuring — superficial arpents."

2d. A second lot composed of the following tracts, to wit: "Lot B 1, measuring — front on Bayou Teche, on the west side of
175 said bayou, adjoining lot A 1, by — arpents in depth, and lot B 2, being the north half, more or less, of the land confirmed to Solomon Andrews, on the east side of said Bayou Teche, containing — superficial arpents."

3d. A third lot, composed of the following tracts, viz: "Lot C 1, measuring — arpents front on Bayou Teche, on the west side of said Bayou Teche, adjoining lot B 1, by — arpents in depth, and lot C 2, measuring — arpents front on Bayou Teche, on the east side of said bayou, opposite lot C 1, by — arpents in depth."

4th. A fourth lot, composed of the following tracts, viz: "Lot D 1, measuring — arpents front on Bayou Teche, on the west side of said bayou, adjoining lot C 1, by — arpents in depth, and lot D 2, adjoining lot C 2 on the east side of Bayou Teche, measuring — arpents front on said bayou, by — arpents in depth."

Terms and Conditions.

Lots A 1 and A 2 to be sold with (10) ten shares of the Consolidated Association of the Planters of La. and (53) fifty-three shares of the Citizens' Bank of La., reduced to fifty shares, the purchaser to furnish a stock note for ($848) eight hundred and forty-eight dollars, payable on the 1st day of December, 1871, or renewable according to the charter of the Citizens' Bank of La., and the balance

of the price one-third cash and the balance at one and two years' credit, in notes bearing 8% interest from date to final pay-
176 ment, secured by mortgage and vendor's privilege, and 5% attorney's fees in case of foreclosure.

Lots B 1 and B 2 with (17) seventeen shares of the Consolidated Association and (81) eighty-one shares of the Citizens' Bank, reduced to (74) seventy-four shares, the purchaser to furnish a stock note for ($1,296) twelve hundred and ninety-six dollars, payable at the same date above mentioned, subject to the same renewal and the balance of the price payable on the same conditions as for lots A 1 and A 2.

Lots C 1 and C 2 and lots D 1 and D 2 each with (10) ten shares of the Consolidated Association and (53) fifty-three shares of the Citizens' Bank, reduced to (51) fifty-one shares, each purchaser to furnish a stock note for ($848) eight hundred and forty-eight dollars, payable at the same date above mentioned, subject to same renewal and the balance of the price payable on the same conditions as lots A 1 and A 2.

You are further commanded to make return of your proceedings to my office as the law directs.

Given under my hand and seal official this 18th day of September, A. D. 1871.

(Signed) J. W. LYMAN, JR.,
Clerk Dist. Court Parish St. Mary and Performing Clerical Duties of the Parish Court of said Parish.

Received this order of seizure and sale on the 25th day of September, A. D. 1871; and, after complying with all legal
177 formalities, I advertised the within-described property for sale in the newspaper called the Banner and Courier, it being the official paper of the parish of Iberia, published in the town of New Iberia, on the 30th day of September, A. D. 1871, stating in the advertisements that the sale would take place at the court-house, in the town of New Iberia and parish of Iberia, La., on Saturday, the 4th day of November, A. D. 1871, between legal sale hours; and, having further complied with all the additional requisites of the law, such as having the said property appraised according to law, I did offer said property at public auction at the place and time above mentioned; and, having read in a loud and audible voice, 1st, the advertisement above referred to; 2nd, the certificate of the recorder of the parish of Iberia obtained by me for the purpose of sale, I then proceeded immediately to the crying and adjudication of said property, when, the same having been cried a considerable time and no one having bid higher, I adjudicated said property to the Citizens' Bank of Louisiana for the price and sum of eleven thousand three hundred and fifty dollars, which price of adjudication the bank paid in the manner following: It paid cash costs of suit, sale, publications, and taxes to date, &c., amounting to one thousand five hundred and fourteen dollars. The balance of the purchase price was retained by the bank, it being the seizing creditor.

Now know ye, therefore, that I, Clermont Young, sheriff aforesaid,

by virtue of the said writ of seizure and sale in such cases made and provided, and in consideration of the said sum of eleven thou-
178 sand three hundred and fifty dollars paid as aforesaid, do bargain, sell, and deliver unto the said Citizens' Bank of La. the property above described, and all the rights, title, and interest which the said succession of Charles Olivier and wife had in the said property on the 4th day of November, A. D. 1871, or at any time since had or now has:

To have and to hold the said property unto the said Citizens' Bank of La. as fully as I, the said sheriff, under the authority aforesaid, might, could, or ought to sell and convey the same.

In witness whereof I have hereto set my hand in my official capacity, at the town of New Iberia, in the par. of Iberia, La., this the 4th day of November, A. D. 1871.

(Signed) C. YOUNG, *Sheriff.*

Signed in presence—
L. HARRY MONTAGE.
W. R. WHITE.

CLERK'S OFFICE, ST. MARY'S PARISH, LOUISIANA.

I hereby certify that the within and foregoing is a true and correct copy of the original on file and of record in my office.

In evidence whereof witness my hand and official seal this the 16th day of September, A. D. 1880.

[SEAL.] (Signed) J. B. VERDUN, JR., *Clerk.*

Fee, $2.50.

179 *Sale of Property, Marked Charles Gitzinger "A." Filed May* 22, 1885.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that on this twenty-third day of June, eighteen hundred and seventy, before me, Edward G. Gottschalk, a notary public in and for this city and the parish of Orleans, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Joseph Gitzinger, of this city, who declared that for the consideration hereinafter set forth he does by these presents grant, bargain, and sell, with all legal warranties and with substitution and subrogation to all his rights and actions in warranty against all preceding vendors or possessors, unto Charles Gitzinger, of this city, here present acknowledging possession and accepting for himself, his heirs and assigns:

1st. The one undivided half of a certain sugar plantation, together with the one undivided half of all the buildings and improvements thereon and appurtenances thereof, and all the rights, ways, servi-
tudes, privileges, and advantages thereunto belonging or in
180 anywise appertaining, situate in the parish of Jefferson, in this State, on the right bank of the River Mississippi, about four miles above the city of New Orleans, measuring, more or less,

eleven arpents front on said Mississippi river by eighty arpents in depth and widening in the rear to seventeen arpents, the whole of said plantation containing, more or less, eleven hundred and forty superficial arpents, and is bounded above by lands of F. H. Fazende and below by lands now or late belonging to the late W. C. Micou. The improvements on said plantation consist of a two-story frame building, stables, cabins, steam saw and grist mills, a draining machine in the rear, the machinery, engines, sugar-house, &c.

2d. One hundred and nine shares of the capital stock of the "Consolidated Association of the Planters of Louisiana," located in the city of New Orleans, secured by mortgage on said plantation, and attached thereto, he, said Joseph Gitzinger, hereby transferring unto said Charles Gitzinger his undivided half interest in said shares of stock so far as said presently sold half of said plantation is concerned.

3d. The one undivided half of all and singular the live stock, cattle, agricultural implements, &c., on said plantation, the carts, harnesses, &c., and the one undivided half of the standing or growing crop, the whole without any exception or reservation, and of the fodder, grain, and railroad cars on said plantation. The said one undivided half of said plantation has been acquired by said vendor by purchase from John Salvant by act passed before me, notary, on the twelfth of November, eighteen hundred and
181 sixty-eight. Said vendor declared that he is not married.

Said purchaser does hereby dispense, 1st, with the production of the certificate required by the article 3328, Civil Code of this State, and releases the undersigned notary from all responsibility in the premises; 2d, and, with the production of the tax receipts required by law, discharging hereby me, notary, from all liability, costs, damages, or fines to which he may be subject for passing this act without said tax receipts being exhibited:

To have and to hold the said property unto the said purchaser, his heirs and assigns, to their only proper use and behalf forever.

This sale is made for and in consideration of the price and sum of forty thousand dollars, which the said vendor hereby acknowledges to have received in the manner following, to wit: Ten thousand dollars in ready money, for which he grants acquittance and discharge; and for the balance of said purchase price the said purchaser has furnished his two several promissory notes to his own order, and by him endorsed, dated the twenty-third day of June, eighteen hundred and seventy, each for fifteen thousand dollars, payable, respectively, in twelve and twenty-four months at the "Louisiana State Bank," in this city, with interest thereon at the rate of eight per cent. per annum from date until final payment, which notes have been duly paraphed *ne varietur* by me, notary, to identify the same herewith.

And in order to secure the payment of said promissory
182 notes in capital, and all interest thereon as aforesaid, vendor's privilege and special mortgage in favor of said vendor and the future holder or holders of said notes is hereby retained on the property presently sold, the said purchaser hereby binding himself

and his heirs not to sell, alienate, or encumber the same to the prejudice of this act.

And the said purchaser furthermore *bind* to keep the buildings on said property constantly insured against the loss by fire to an amount not less than — dollars, and to transfer the policy of insurance to the said vendor until the full and final payment of the said note, hereby consenting and agreeing that said vendor shall have the right to transfer such policy to any future holder or holders of the said note, and that, in case of failure on the part of the said purchaser to effect such insurance, the holder or holders of the said note shall have the right to do so, and the reimbursement of all sums paid for that purpose shall be secured by the mortgage herein granted; but these clauses shall not be construed as obligatory on such holder or holders or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

In case of suit being instituted for the recovery of the amount of said notes or of any part thereof he, the said present purchaser, shall pay the fees of the attorney-at-law who may be employed for that purpose, which fees are hereby fixed at two and a half per cent. on the amount sued for and are to stand secured by mortgage on the presently sold property.

183 The U. S. stamps of forty dollars are hereunto attached.

Done and passed in my office, at the city of New Orleans aforesaid, on the day, month, and year first before written, in the presence of Selim Magner and James Fahey, competent witnesses, who sign these presents with the said appearers and me, notary, after reading thereof.

(Original signed) J. GITZINGER.
C. GITZINGER.
S. MAGNER.
JAS. FAHEY.
[SEAL.] E. G. GOTTSCHALK, *N. P.*

A true copy.
New Orleans, 24th June, 1870.
(Twenty-two words erased, null and void, approved.)
[STAMP.] (Signed) E. G. GOTTSCHALK, *N. P.*

Registered Book L, folio 554, parish of Jefferson, June 25th, 1870.
[SEAL.] (Signed) T. McCORMACK, *Recorder.*

Sheriff's Sale, Marked Chas. Gitzinger "B." Filed May 22, 1885.

Whereas I, Amos S. Collins, sheriff of the parish of Jefferson, by virtue of a writ of seizure and sale to me directed by the honor-
184 able the second judicial district court of Louisiana in and for the parish of Jefferson, in the case of Chas. Getzinger *vs.* Succession of John Salvant, No. 3973 of the docket of said court, and dated the 27th of March, 1872, and after having fulfilled and complied with

all the previous legal requisites, did sieze the following-described property, to wit:

The one undivided half of a certain plantation situate in the parish of Jefferson, in this State, on the right bank of the Mississippi river, about four miles above the city of New Orleans, measuring, more or less, eleven arpents front on said Mississippi river by eighty arpents in depth and widening in the rear to seventeen arpents, the whole of said plantation containing, more or less, eleven hundred and forty superficial arpents, and is bounded above by lands of F. H. Fazende and below by lands now of or lately belonging to the late W. C. Micou, together with the undivided half of all and singular the buildings and improvements and appurtenances thereto belonging, consisting of a two-story frame dwelling-house, stables, cabins, steam saw and grist mills, and a draining machine in the rear, the agricultural implements, horses, 26 mules, 11 carts and wagons, etc., etc., now on said plantation, the whole of which plantation and appurtenances was acquired by said Salvant by purchase from Henry Hart per act before Barnett, notary public, 31st October, 1867.

And, after having given due and legal notice to Mrs. Rose Soulant, widow of John Salvant, and John Salvant, defend-
185 ants, of the said seizure in the manner pointed out by law, I advertised the said described property for sale after the expiration of the legal delay from the time of said notice, to wit, on August 10th, 1872, by advertisements, composed in English, announcing the sale to take place at the door of the court-house, on Canal avenue, between Hampson and Second streets, in the city of Carrollton, on Wednesday, the eleventh day of September, 1872, at 11 o'clock a. m. Said advertisements were inserted and published in English in a newspaper in the parish of Jefferson, to wit, in the Louisiana State Register, from the tenth day of August, 1872, to the day of sale, being full thirty days from the date of the first notice given in said newspaper; said advertisements were inserted and published in said newspaper on the tenth, seventeenth, twenty-fourth, and thirty-first of August and the seventh of September, and were duly posted according to law.

And, having further complied with and performed all the additional previous legal requisites, and after the said described property having been duly appraised, did expose the same at public sale according to law on Wednesday, the 11th day of September, eighteen hundred and seventy-two, at the hour and place aforesaid, first having announced in a loud and audible voice the conditions of the sale as being cash in U. S. Treasury notes, and having read in a similar tone of voice the certificate of the parish recorder and recorder of mortgages of even date with the day of sale, wherein he certifies to the following mortgages standing in the name of
186 John Salvant and recorded against the before-described property (and no others) viz:

1st. Forfeited to the State for the tax of 1867, $210.00.
2d. " " " " " 1868, $178.50.
3d. " " " " " 1869, $337.50.

4th. Forfeited to the State for the tax of 1870, $652.50.
5th. " " " " " 1% sp'l tax of 1868, $400.00.
6th. The one in favor of Rose Soulant, his wife, for twenty-six hundred and sixty-eight dollars, being the amount received by J. Salvant for her account, as he acknowledges, by act passed before E. Commageré, notary, on 20 Oct., 1871, B. 25, fo. 633.
7th. The one which, by an act passed before E. G. Gottschalk, not., on 12th Nov., 1868, he granted in favor of Jos. Getzinger to secure six notes drawn and endorsed by himself, dated Nov. 12, '68, each for one thousand dollars ($1,000), payable in 6, 12, 18, 24, 30, and 36 months after date, with 8% interest from maturity until paid, B. 23, fo. 458.
8th. The certificate of the clerk of the parish court of this parish showing that Mrs. Rose Soulant, widow of John Salvant, was appointed natural tutrix of her minor children, and that the amount of the inventory is $53,941.50, B. 26, fo. 31.
9th. The notice of seizure in the case of C. Getzinger *vs.* John Salvant, No. 3973 of second judicial dist. court, to pay and satisfy the writ of seizure and sale for $6,000, B. 26, fo. 104.
10th. The notice of seizure in case of C. Getzinger *vs.* Succession of John Salvant, No. 3973 of second jud. dist. court, to pay and satisfy writ of seizure and claim for 6,000, B. 26, fo. 169.
187 11th. By an act executed by E. Barnett, not., dated Oct. 31, 1867, J. Salvant assumed to pay the original mortgage granted by Mrs. M. H. Saulet, wife of J. V. De Gruy, in favor of the Consolidated Association of the Planters of La., to secure 109 shares of the capital stock of said bank, by act passed before A. Ducatel, notary, in 1838, B. 23, fo. 34, to secure, 1st, $54,000, amount of 109 shares; 2d, $27,250, amount of a credit allowed on said shares as a loan, for which she, the said Mrs. De Gruy, bound herself to pay and reimburse to said bank in the proportion of $\frac{1}{10}$ on Jan. 2, '39, and from year to year; also, in advance, the same day, at each annual payment, the interest, at the rate of 8 %, on all sums due on the principal sum, and to represent the loan above attained by the said Mrs. De Gruy, she furnished to said bank an obligation for $27,250.00, dated June 20, '38, and payable 2d January, 1839; 2d, 8,963.96, amount of an additional credit granted to her, payable by $\frac{1}{8}$ annually on April 1, '39, and from year to year; also, in advance, the same day, at each annual payment, the interest, at 8 % per annum, on all the balance due on the principal amount, and to represent the said loan of $8,963.96, said Mrs. De Gruy furnished to the said bank an obligation for the like amount, payable on 2d January, 1839, B. 8, fo. 266. C. Gardanne and wife and Robert Murphy assumed, by act before A. Chiapella, notary, dated January 16, '47, to pay in place of Mrs. De Gruy the said obligations, and said Robert Murphy and C. Gardanne and wife declared that, by act before A. Ducatel, notary, dated May 21, '47, they acquired said property, and, as an additional guarantee of said 109 shares and to secure the re-
188 imbursement of all balance due on a loan on said shares, they

granted a mortgage in favor of said bank on the above property, B. 12, fo. 48 and 208.

Parish of Jefferson, September eleventh, 1872.

(Signed) THOMAS McCORMACK, *Recorder.*

When Charles Gitzinger, being the highest and last bidder, the said before-described property was adjudicated to the said Charles Gitzinger for the price and sum of ten thousand ($10,000) dollars, which he has settled in the following manner, to wit: As plaintiff in said suit he has retained in his hands the sum of seven thousand three hundred and fifty-four dollars and sixty-four cents ($7,354.64), being the amount of his claim, as shown by the writ of seizure and sale issued in this case, and the remainder of said adjudication price, viz., two thousand six hundred and forty-five dollars and thirty-six cents ($2,645.36), he has paid in cash:

Now, therefore, know all men by these presents that I, the said sheriff, in consideration of the premises and by virtue of the laws of the State of Louisiana in such cases made and provided, do sell and transfer the said before-described property to the said C. Gitzinger, and all the right and title which the said succession of John Salvant had in or to the said before-described property; to have and to hold the same to the said C. Gitzinger, his heirs and assigns, forever.

(1 word interlined; 4 words erased.)

Approved.

189 In witness whereof I have hereunto signed my name, at the city of Carrollton, in the State of Louisiana, this 14th day of October, in the year one thousand eight hundred and seventy-two and the ninety-seventh year of the Independence of the United States.

(Signed) AMOS S. COLLINS,
Sheriff of the Parish of Jefferson.

Signed in the presence of—
(Signed) JOHN JORDAN.
T. A. MARTIN.

Recorded — clerk's office, Deed Book "C," folios 337 to 339, incl., this 15th October, 1872.

[SEAL.] (Signed) H. L. BURNS, *Clerk.*

Recorded, Book 26, folio 245.

Registered, Book M, folio 429, Parish of Jefferson, October 16th, 1872.

[SEAL.] (Signed) THOMAS McCORMACK, *Recorder.*

I hereby certify that all mortgages and privileges recited in the mortgage certificate, with the exception of the one eleventhly and lastly described, have been this day cancelled.

Parish of Jefferson, October 16th, 1872.

[SEAL.] (Signed) THOMAS McCORMACK, *Recorder.*

190 *Copy of Sale to R. T. Hanson and Meyer Lemann, Marked Exhibit Lehman "A." Filed May* 22, 1885.

UNITED STATES OF AMERICA,
The State of Louisiana, Parish of Ascension:

BERNARD LEMANN to RICHARD T. HANSON and MAYER LEMANN.

Before me, Robert N. Sims, a notary public, duly commissioned and qualified, in and for the parish of Ascension, and in the presence of the hereinafter named and subscribed witnesses, personally appeared Bernard Lemann, a resident of this parish, who declared that, for the considerations and on the terms and conditions hereinafter set forth, he does by these presents grant, bargain, transfer, sell, and convey, with all legal warranties so far as the title conveyed to him by the heirs of Miss C. P. E. de Lafeniere on the ninth of March, 1877, is concerned, but without any personal warranty of the title beyond that, and with substitution and subrogation to all his rights and actions in warranty against all preceding vendors and possessors, unto Richard T. Hanson and Meyer Lemann, both of this parish, here present, accepting, and purchasing for themselves, their heirs and assigns, in equal portions, to wit, in the propertion of one undivided third each and acknowledging delivery and possession thereof, the following-described property, to wit:

191 The undivided two-thirds (⅔) of a certain sugar plantation situated in the parish of Assumption, in this State, on the left bank of Bayou La Fourche, at about four miles from the Mississippi river, measuring five arpents front on said bayou by eighty arpents in depth, but opening so as to measure one thousand superficial arpents, bounded on the upper line by lands formerly owned by Manuel Monson, and known as the Crescent plantation, and on the lower line by lands formerly owned by Mathieu Martinez and now by Etienne J. Vicknair, together with the undivided two-thirds of all the buildings and improvements thereon and appurtenances thereof, and all the right, way, servitude, privilege, and advantages thereunto belonging or in anywise appertaining, as well as fifty-five mules and all other stock, farming utensils, implements of husbandry—in fact, all and everything situated on and belonging to said plantation, without any exception or reservation whatsoever—which above-described property formerly belonging to Miss Charlotte Pauline, Emelie de la Feniere, for having acquired the same by purchase at a sale made by F. G. Hanon, marshal of the fifth circuit and district of Louisiana, on the tenth day of October, 1867, by virtue of a writ of seizure and a sale unto him, said marshal, directed by the hon. the United States circuit court for the fifth circuit and district of Louisiana, at the suit of Miss C. E. P. de la Feniere *vs.* P. H. Foley and succession of J. S. Wilson, No. 5298 of the docket of said court, for which the marshal granted unto the said Miss C.

192 E. P. de la Feniere as deed, dated the nineteenth of October, 1867, duly recorded in the clerk's office of said court in record book of sales and bonds No. 2, page 157 and *als.*, and duly

registered in the recorder's office of said parish of Assumption in record book of sheriff's sale No. 12, page 175 *et als.*

And the said plantation and appurtenances now belonging to the said present vendor for having purchased and acquired the same by public and authentic act passed before James Foley, a notary public in and for the city of New Orleans, on the ninth of March, 1877, from the sole heirs and universal legatees of the said Miss C. P. E. de la Feniere, deceased, duly recognized as such, and in possession of all the property and effects left by her by an order of the hon. the second district court of the parish of Orleans, dated the eighth of March, 1877, rendered in the matter of the succession, No. 9098 of the docket of said court.

The said Bernard Lemann, vendor, declared that all taxes due and exigible on said above-described property up to the first of January, 1877, have been duly paid, and that his vendors in the sale thereof to him have bound and obligated themselves to pay all taxes thereon due and exigible during the current year 1877, the said present purchasers hereby declaring themselves satisfied unto the said declaration, dispensing with the production of tax receipts required by law, and binding themselves *in solido* with the said present vendor to exonerate me, notary, from all liability in the premises:

To have and to hold the said property unto the said purchasers, their heirs and assigns, to their own proper use and behoof
193 forever.

This sale is made for and in consideration of the price and sum of twenty-two thousand dollars, which the vendor, Bernard Lemann, acknowledges to have received in the manner following, to wit: Eleven thousand dollars in ready money, for which he grants acquittance and discharge, and for the balance of said purchase price the said purchasers have made and subscribed their two joint promissory notes to their own order and by themselves endorsed in blank, dated this fourteenth of March, 1877, each for the sum of five thousand five hundred dollars, payable, respectively, on the ninth of March, 1878, and the ninth of March, 1879, at the Union National Bank, in the city of New Orleans, with interest thereon at the rate of eight per cent. per annum from the ninth day of March, 1877, until final payment, which notes have been duly paraphed "*ne varietur*" by me, notary, to identify the same with this act; and in order to secure the payment of the said promissory notes in capital and all interest thereon as aforesaid the vendor's lien or privilege is hereby retained by the vendor on the property sold by consent of the purchasers, and the said purchasers do hereby especially mortgage and hypothecate the said above-described property presently sold in favor of said vendor or any future holder of said notes, hereby binding themselves and their heirs not to sell, alienate, or encumber the same to the prejudice of this act.

In the event of suit being instituted for the recovery of the amount of said notes or any part thereof the said purchasers
194 hereby bind themselves *in solido* to pay the fees of the attorney who may be employed for that purpose, which fees

are hereby fixed at ten per cent. on the amount sued for and shall remain secured by the mortgage herein granted and retained.

The parties to this act dispense with the production of the mortgage certificate from the recorder's office of Assumption parish required by article 3364 of the Civil Code, exonerate the undersigned notary from all responsibility or liability in the premises.

The vendor further declared that the plantation above described is subject to a special mortgage and vendor's privilege in favor of his vendors to secure the payment of two notes furnished by him in the purchase of the same on the ninth of March, 1877, each for the sum of eight thousand two hundred and fifty dollars, to his own order and by him endorsed, payable at the Union National Bank, in New Orleans, respectively, on the 9th of March, 1878, and 9th of March, 1879, and that the two notes of five thousand five hundred dollars each furnished by the purchasers herein have been given to represent their share of indebtedness in the credit portion of said purchase price and in lieu of the special resumption by them of the amounts secured by said mortgage and vendor's privilege granted by the vendor as aforesaid on the ninth of ——, 1877, in the act of sale before James Fahey, a notary public, of New Orleans.

Thus done and passed at my office, in the town of Donaldsonville, this fourteenth day of the month of March, in the year of 195 our Lord 1877, in the presence of Messrs. Armand Richard and Edward Maurin, competent witnesses, who, together with the parties and me, notary, have signed these presents after due reading of the whole.

It is well understood and stipulated between the parties to this act that the purchasers accept the title herein conveyed in the same manner as if they had been copurchasers with the vendor in the same from the heirs of Miss C. P. E. de Lafeniere, and that said purchasers will not have any action against the said vendor in warranty for any defect in said title conveyed to him by said act of 9th of March, 1877.

(Original signed) BERNARD LEMANN.
R. T. HANSON.
MEYER LEMANN.

A. RICHARD.
EDWARD MAURIN.

R. N. SIMS, *Not. Pub.*

CLERK'S AND EX OFFICIO RECORDER'S OFFICE,
PARISH OF ASSUMPTION, LA.

I, the undersigned, do hereby certify that the above and foregoing is a true and correct copy of the records of this office and duly recorded in Book of Conveyances, Letter O, folio 480 *et seq.*, March 22nd, 1877.

In faith whereof I grant these presents, under my hand and seal of office, this 30th day of October, A. D. 1884.

[SEAL.] (Signed) OSCAR DUGAS,
D'y Clerk and ex Officio Recorder.

196 *Copy of Sale to Bernard Lemann, Marked Exhibit Lehman "B." Filed May 22, 1885.*

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

The heirs of the late Miss C. P. E. de la Ferriere to Bernard Lemann.

Be it known that on this ninth day of March, eighteen hundred and seventy-seven, before me, James Fahey, a notary public in and for this city and the parish of Orleans, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Paul Boé, of this city, herein acting in his capacity of agent and attorney-in-fact of, 1st, Mrs. Anne A. Levesque de la Ferriere, wife of Edmond Marie, Vicompte de Roquefeuil; 2d, Miss Appoline Josephine Hippolyte Levesque de la Ferriere, and, 3d, Adhemar Marie Edouard Levesque de la Ferriere, of Requing, France, duly appointed by a certain power of attorney executed by them in his favor before E. Lexlech, notary, at Requing, Canton of Rohan, France, on the thirtieth of December, 1876, legalized by the United States consul at Paris, France, and deposited in the records of the second district court for this parish in the matter of the succession of Miss C. E. P. de la Ferriere, hereinafter mentioned, the said Paul Boé having been confirmed as such at-
197 torney-in-fact by the order of court hereinafter set forth, who declared that, for the consideration and on the terms and conditions hereinafter set forth, he, in his said capacity, does by these presents grant, bargain, and sell, with all legal warranties and with substitution and subrogation to all the rights and actions in warranty of his said constituents against all preceding vendors or possessors, unto Bernard Lemann, of the parish of Ascension, in this State, here present accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, the following-described property, viz:

A certain sugar plantation, situated in the parish of Assumption, in this State, on the left bank of the Bayou Lafourche, at about four miles from the Mississippi river, measuring five arpents front on said bayou by eighty arpents in depth, but opening so as to measure one thousand (1,000) superficial arpents, bounded on the upper line by land formerly owned by Manuel Monson and known as the Crescent plantation, and on the lower line by lands formerly owned by Mathieu Martinez and Etienne J. Vicknair, together with all the buildings and improvements thereon and appurtenances thereof, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in anywise appertaining, as well as fifty-five (55) mules, and all other stock, farming utensils, implements of husbandry, and, in fact, all and everything situated on and belonging to said plantation, without any exception or reservation whatsoever; which above-described property formerly belonged to the late Miss

Charlotte Pauline Emilie de la Ferriere, for having acquired
198 the same by purchase at a sale made by F. J. Herron Marshall, at the fifth circuit and district of Louisiana, on the tenth day of October, 1867, by virtue of a writ of seizure and sale unto him, said sheriff, directed by the hon. the United States circuit court for the fifth circuit and district of Louisiana, at the suit of Miss C. E. P. de la Ferriere *vs.* P. H. Foley and Succession of J. S. Wilson, No. 5298 of the docket of said court, for which the said Marshall granted unto the said Miss C. P. E. de la Ferriere a deed dated the nineteenth of October, 1867, duly recorded in the clerk's office of said court in Record Book of Sales and Bonds No. 2, pages 157 and *als.*, and duly registered in the recorder's office of said parish of Assumption in Record Book of Sheriff's Sales No. 12, pages 175 *et als.;* and the said plantation and appurtenances now belong to the said present vendors, for having inherited the same from the said Miss Charlotte Pauline Emilie de la Ferriere, deceased, as her sole and only heirs and universal legatees, duly recognized as such, and sent, in possession of all the property and effects left by her, an order of the hon. second district court for this parish, dated the eighth of March current, 1877, rendered in the matter of her succession, No. 39098 of the docket of said court.

The said Paul Boé, in his said capacity, declared that all taxes due and exigible on said above-described property up to the first of January, 1877, have been duly paid, and he binds and obligates his said constituents to pay all taxes thereon due and exigible during the
current year 1877, the said present purchaser hereby declar-
199 ing himself satisfied with the said declaration and obligation, dispensing with the production of the tax receipts required by law, and binding himself *in solido* with the said present vendors to exonerate me, notary, from all liability in the premises:

To have and to hold the said property unto the said purchaser, his heirs and assigns, to their only proper use and behoof forever.

This sale is made for and in consideration of the price and sum of thirty-three thousand ($33,000) dollars, which the said Paul Boé, in his said capacity, hereby acknowledges to have received in the manner following, to wit:

Sixteen thousand five hundred dollars in ready money, for which he grants acquittance and discharge, and for the balance of said purchase price the said purchaser has furnished his two several promissory notes to his own order and by himself endorsed, dated this ninth of March, eighteen hundred and seventy-seven, each for the sum of eight thousand two hundred and fifty dollars, payable, respectively, in one and two years after date, at the Union National Bank in this city, with interest thereon at the rate of eight per cent. per annum from date until maturity and from maturity, if not then paid, until final payment, at the rate of eight per cent. per annum as a penal clause, which notes have been duly paraphed "*ne varietur*" by me, notary, to identify the same herewith.

And, in order to secure the payment of said promissory notes
200 in capital and all interest thereon as aforesaid, vendor's lien or privilege and special mortgage in favor of said vendor

and the future holder and holders of said notes is hereby retained by the said present vendor and hereby granted by the said present purchaser on the property presently sold, the said purchaser hereby binding himself and his heirs not to sell, alienate, or encumber the same to the prejudice of this.

And the purchaser furthermore binds himself to keep the buildings on said property constantly insured against the loss by fire to an amount not less than five thousand dollars, and to transfer the policy of insurance to the said vendors until the full and final payment of said notes, hereby consenting and agreeing that said vendor shall have the right to transfer such policy to any future holder or holders of the said notes, and that in case of failure on the part of said purchaser to effect such insurance the holder or holders of the said notes shall have the right to do so, and the reimbursement of all sums paid for that purpose shall be secured by the mortgage herein granted, but this clause shall not be construed as obligatory on such holder or holders or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

In case of suit being instituted for the recovery of the amount of said note or any part thereof the said present purchaser hereby binds himself to pay the fees of the attorney-at-law who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for and shall remain secured by the mortgage herein granted and retained.

201 The mortgage certificate otherwise required by law is hereby dispensed with by the parties hereto, and the undersigned notary relieved from all responsibility or liability in the premises.

Thus done and passed in my office, at the city of New Orleans, on the day, month, and year first above written, in the presence of Benjamin Ory — David J. Dowers, competent witnesses, who sign these presents with the said appearers and me, notary, after reading thereof.

(Original signed) P. BOÉ.
" " BERNARD LEMANN.
" " BENJAMIN ORY.
" " DAVID J. DOWERS.
" " JAS. FAHEY,
Notary Public.

A true copy.
New Orleans, 9th March, 1877.
(Signed) JAS. FAHEY,
Notary Public.

CLERK'S OFFICE, PARISH OF ASSUMPTION, LOUISIANA.

I, the undersigned, do hereby certify that the above and foregoing is a true and correct copy from the records of this office and duly recorded in Book of Conveyances, Letter Q, folio 451 *et seq.*, March 12th, 1877.

In testimony whereof I grant these presents under my hand and the seal of office this 29th October, A. D. 1884.

[SEAL.] (Signed) C. P. HELLUIN,
D'y Clerk and ex Officio Recorder.

202 *Certified Copy of Opinion and Decree, marked Exhibit "Lord No. 1." Filed May 22, 1887.*

Supreme Court of the State of Louisiana.

CONSOLIDATED ASSOCIATION OF PLANTERS
vs.
GEORGE J. LORD. } No. 8589.

Appeal from the civil district court for the parish of Orleans. On rehearing.

CLERK'S OFFICE, NEW ORLEANS, *April* 23, 1883.

Mr. Justice Manning delivered the opinion and decree of the court in the words and figures following, to wit:

The corporate existence of the Consolidated Association was terminated by the judicial decree of forfeiture in November, 1842, made at the instance of the State. Doubtless in anticipation of this decree the State had already provided by the act of that year that the management of the property banks, when their charters were adjudged to have been forfeited, should be confided to persons appointed by the State. Immediately after the decree of forfeiture the State by legislative expression declared that the assets of this bank are and shall remain in the possession and under the exclusive management of the State until final payment of all
203 the State bonds issued in its favor. (Acts 1843, p. 56.) The Governor accordingly appointed managers, who took charge of the affairs of the bank.

This exclusive management by the State ceased in 1847, when the State proposed, by a legislative act, that the stockholders should participate in the management and should elect three of the managers; the State continued to appoint the others. This board thus composed was authorized to extend the bonds of the State issued for this bank to periods ranging from six to eighteen years, and enacted that the liquidation of the bank may be continued until the maturity and payment of the bonds thus extended. "This was not imperative that it should be thus prolonged."

This important act further laid upon the managers and directors the duty of requiring of the stockholders such annual payment as would accumulate a fund sufficient to meet the obligations of the State, restricting them only in this, that the equal instalments should run from one to seventeen years. Acts 1847, p. 76.

The managers thereupon, by resolutions, determined that under the above act a contribution of six dollars per share shall be paid by each stockholder of this association on June 1st, 1849, and on same day of each succeeding sixteen years, and that the sum due on the stock loans by the stockholders shall be divided into eighteen

equal annual instalments, to be paid on June 1st, 1884, and every succeeding June for seventeen years.

204 The stockholders then met, accepted this legislative act tendered them by the State, and voted to abide by the arrangement and settlement therein provided. The managers and directors had ascertained by careful calculation that an assessment of $102 per share would accumulate a fund sufficient to meet the obligations of the State in behalf of this bank. It would produce $612,000, and all this sum has been paid except thirteen thousand dollars.

The limit of the time thus fixed for the liquidation of this bank was June 30th, 1865. That time expired and the liquidation was not ended, nor was it continued and extended before its expiration. The Legislature, however, assumed in 1866 to prolong this liquidation ten years and no more, "but the stockholders were not consenting parties to this extension and appear to have stood on their rights acquired under the act of 1847. The State assumed more than this, viz., that this bank was at that moment fully organized, whereas it had been over twenty years in liquidation, and the last section of act of 1847 specially provided that nothing therein should be so 'construed as to revive the charter' or permit any forfeited privileges" to be exercised.

The ten years' extension of this act expired in 1876, and the bank was as far from being liquidated as when it began. The Legislature appear to have abandoned it and to have adhered to the emphatic "no more" extension contained in the act of 1866. Then one of the courts appointed a receiver of the defunct corporation, who took possession of its assets, and shortly afterwards some of the

205 holders of the State bonds issued for it brought suit in the U. S. circuit court to have it liquidated there, and three receivers supplanted the single one who had been appointed by the State court.

This lasted until May, 1879, when a receiver *pro tempore* was appointed, who retained possession of the assets until June, 1880, when they were turned over to the State.

Meanwhile the act of 1878 was passed, under which the plaintiffs claim the right to demand the contributions which this defendant resists; but the State is the real plaintiff. The attorney general appeared in her behalf. She has intervened and joined the nominal plaintiffs, and it is therefore the State that is seeking to enforce payment of the contributions under both acts of 1847 and 1878.

It is against law and right, and yet more against equity and good conscience, that she should be upheld in it. It is against law because she tendered and proposed a settlement to the stockholders in the act of 1847, which, upon their acceptance of it, became a contract with them which she not only bound herself to perform, but took and held control of the affairs of the dead association in order that she might perform it. It is against equity because she has received what she, at the outset of her bargain, by herself proposed, estimated as sufficient to protect her from her liability upon her bonds issued

for the association, and, instead of applying it to the purposes for which she had exacted it, squandered it on riotous living.

206 The horde of officers—president, vice-president, cashier, receiver, directors—pass before us in this record in lengthened procession, laden with salaries and plethoric with stipends, and the lean and slippered stockholder, gaunt from forty years' exhaustion, at last holds up his hands in eager, passionate suppliance for relief from this insatiate, ever-recurring hunger for more contributions.

For only five and a half years of the forty-one that has elapsed since the decree of 1842 terminated the corporate existence of the association the expenses are thus summarized:

B. F. Flanders, receiver	$7,988 03
A. Eustis, receiver	4,165 33
L. A. Wiltz, receiver	2,165 31
J. Calhoun, secretary, cashier, receiver	16,508 20
Lawyers	19,546 08
Employees	3,907 86
W. Steven, president	3,239 93
Master in chancery	1,110 00
	$58,630 74

That is the domestic expenditure from June, 1876, to January, 1882. Had it been used for the purchase of bonds it would have bought them to the amount of $100,000. After the most liberal allowance for necessary expenses in conducting the mode of protecting herself it is fair to assume that had the funds which the stockholders contributed not been wasted the full number and amount of the State bonds would have been paid. It is not only fair to as-

207 sume it, for if these figures are a sample of the forty-one years' expenditures it can be arithmetically proved to have been sufficient.

The contribution of forty dollars per share now demanded, when six was deemed ample thirty-six years ago, of itself shows the waste of resources. The exaction of the ruinous contribution by the State, the party who has had control of the resources and committed or permitted the waste, is not justifiable in any aspect.

One of the causes of this large exaction is that many of the stockholders have become insolvent, and those who are solvent are assessed for the whole. Even if the assessment of 1847 had not been made for the purpose of protecting the State and been ample for it, the State cannot increase the burden of each stockholder by holding him not only individually responsible but each for the other. U. S. *vs.* Ruox, 12 Otto, 423; N. O. Gas Light Co. *vs.* Bennett, 6 Ann, 457.

The defendant has paid the instalments or contributions under the act of 1847—actually paid thirteen of them—and is protected by prescription from the others. In law he owes nothing on them, and has therefore discharged all liability for them.

Whose laches and inaction permitted him to plead prescription successfully? But if he had not paid them, does that non-payment of contributions he owed justify the exaction of contributions he

does not owe? If a stockholder has not paid those contributions let him be compelled to pay them, but it cannot be legally demanded of him that he shall make good the fund which
208 the State has wasted.

It is therefore ordered and decreed that our former decree is set aside, the judgment of the lower court is reversed, and that there be now judgment in favor of the defendant rejecting the demand of the plaintiff and for costs.

A true copy.

[SEAL.] (Signed) WM. DUPRE, *D'y Clerk.*

Copy of Judgment, Marked Exhibit "Lord No. 2." Filed May 22, 1885.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I hereby certify that on the 19th day of November, 1883, judgment was rendered in this court in the following entitled suit, in the words and figures following, to wit:

THE PRESIDENT AND DIRECTORS OF THE CONSOLIDATED ASSOCIATION OF THE PLANTERS OF LOUISIANA *vs.* GEORGE JOSIAH LORD.	No. 2662, Div. D.

209 In the matter of the rule herein taken to cancel mortgages, etc., and submitted for adjudication, for the reasons orally assigned by the court, the law and the evidence being in favor of plaintiff in rule, it is ordered that said rule be made absolute, and accordingly that the recorder of mortgages of the parish of Orleans do cancel and erase from the books of his office the following mortgages, reversions, assumptions, and inscriptions, to wit:

1st. The one in favor of the Consolidated Association of the Planters of Louisiana to secure 22 shares of the shares of the stock of said association, and recorded against Mrs. Celeste Chabot, widow of P. L. B. Duplessis, per act before Octave de Armas, dated 20 October, 1836, in Book 34, folios 80 and 81.

2nd. The one inscribed in favor of same association, for same shares of stock, against Mrs. Elizabeth Mary Helene Duplessis, recorded in Book 47, fo. 155.

3rd. The one in favor of same association, for same stock, inscribed against Jackson Duplessis, per act before Louis T. Caire, notary, of date January 21, 1847, recorded on 23 January, 1847, in Book 50, folio 59.

4th. The one in favor of same association, for same stock, inscribed against the Mechanics' and Traders' Bank, per act before H. B. Cenas, of day 19 February, 1850, recorded in Book 56, page 527, 1st March, 1850.

5th. The one in favor of same association, for same stock, inscribed against George Josiah Lord, as per act before H. B.
210 Cenas, of date 14 March, 1850, recorded on the 19th March, 1850, in Book 56, folio 594.

All of which mortgages, reversions, assumptions, and inscriptions bear against the following-described property, to wit: A certain lot of ground, together with all the buildings and improvements thereon, rights, ways, customs, servitudes, and appurtenances thereunto belonging or in anywise appertaining, in the municipality No. one, now the second district of this city, in the square bounded by Bourbon, Custom-House, Bienville, and Dauphin streets, and measuring sixty feet front on said Bourbon street by one hundred and seventy-eight feet in depth on the side line next to Bienville street and one hundred and twenty feet in depth on the side line next to Custom-House street, and thence extending at right angles thirty feet toward said Custom-House street.

Judgment rendered November 19, 1883.

Judgment signed November 23rd, 1883.

(Signed) N. H. RIGHTOR, *Judge.*

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this eighth day of May, in the year of our Lord one thousand eight hundred and eighty-five.

[SEAL.] (Signed) JAMES DARIER,
Deputy Clerk.

(Stamp.) (Stamp.) (Stamp.)

210*a* Offered in evidence by defendants in connection with the final decree of the supreme court of Louisiana, which is copied in transcript as Exhibit "Lord No. 1," page 202.

Brief for Appellant.

Supreme Court of Louisiana.

PRESIDENT, ETC., OF CONSOLIDATED ASSOCIATION
versus
EXECUTRIX OF GEORGE JOSIAH LORD. } No. 8589.

In granting the rehearing in this case the court has directed the special attention of counsel "to the question involving the liability of stockholders under any call for contributions over and above the call made under the provisions of act No. 100 of 1847; and whether that act, in connection with the resolution of the board of directors, adopted in June, 1847, has the force and effect of a contract between the State and the stockholders of the association, under which the State can be debarred from the right of authorizing and directing any further calls for contribution; and to the additional question involving the right of any stockholder who has not paid his contributions under act of 1847 to invoke the benefit of such contract, if shown to exist."

211 *Sale of Property, Marked Exhibit "Lord No. 3." Filed May 22, 1885.*

STATE OF LOUISIANA, *City of New Orleans:*

14th March, 1850. Sale of property by Mechanics' & Traders' Bank of N. Orleans to G. J. Lord.

Be it known that this day before me, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared George Morgan, Esq., of this city, president of the "Mechanics' and Traders' Bank of New Orleans," a duly incorporated institution of this State, and herein acting in his said capacity by virtue of a resolution of the board of directors of the said bank, passed on the seventh day of March instant, a duly certified copy of which resolution is hereunto in the margin annexed for reference, who declared that, for the consideration and on the terms and conditions hereinafter expressed, he does by these presents, in his said capacity, grant, bargain, sell, convey, transfer, assign, and set over, with all legal warranties, unto George Josiah Lord, also of
212 this city, here present, accepting, and purchasing for himself, his heirs and assigns, and acknowledging delivery and due possession thereof, the following-described property, to wit:

First. A certain lot of ground, together with all the buildings and improvements thereon, rights, privileges, customs, ways, servitudes, and appurtenances thereunto belongtng or in anywise appertaining, situate in the municipality number "one" of this city, in the square bounded by "Bourbon," "Custom-House," "Bienville," and "Dauphine" streets, and measuring sixty feet front on said Bourbon street by one hundred and seventy-eight feet in depth on the side line next to Bienville street, and one hundred and twenty feet in depth on the side line next to Custom-House street, and thence extending at right angles thirty feet towards said Custom-House street.

Second. And twenty-two shares (of the sum of five hundred dollars each) in the capital stock of the "Consolidated Association of the Planters of Louisiana," secured by mortgage on the above-described property, agreeably to the charter of the said institution, being the same property and stock which the said "Mechanics' and Traders' Bank of New Orleans" acquired by purchase from Jackson Duplessis by an act passed before me, notary, on the nineteenth day of February last (1850), the said Duplessis* having acquired the same by purchase from Elizabeth Mary Helen Duplessis by an act passed before Louis T. Caire, late a notary public in this city, on the twenty-first day of January, eighteen hundred and forty-seven.

213 By reference to the annexed certificate of the recorder of mortgages in and for this city and parish, dated this day, it will appear that the property hereinabove described is free from all

* Jackson. This reference approved. (Signed) E. Eude, not. pub.

encumbrance whatsoever, with the exception of the following, to wit:

The special mortgage originally granted by the late Mrs. Céleste Chabot, widow of Peter L. B. Duplessis, by an act passed before Octave de Armas, a notary public in this city, on the twentieth day of October, eighteen hundred and thirty-six, in favor of the president and directors of the Consolidated Association of the Planters of Louisiana to secure the sum of eleven thousand dollars, amount of the above-mentioned twenty-two shares in the capital stock of the said association and interest, which mortgage is hereby assumed by the said George Josiah Lord:

To have and to hold the said described property unto the said purchasers, his heirs and assigns, forever; and the said vendor, in his said capacity of president, the said described property herein conveyed to the said purchaser, his heirs and assigns, shall and will warrant and forever defend against all legal claims and demands whatsoever; and the said vendor, in his said capacity, doth, moreover, transfer unto the said purchaser all and singular the rights and actions of warranty to which the said "Mechanics' and Traders' Bank" is or may be entitled against any and all of the former owners of the premises herein conveyed, hereby subrogating the said purchaser in and to the said rights and actions, to be by him
214 enjoyed and exercised in the same manner as they might have been by the said bank.

This sale is made and accepted for and in consideration of the price and sum of eighteen thousand dollars ($18,000), payable in six equal instalments from "one" to "six" years, with seven per cent. interest per annum, payable semi-annually, in payment and liquidation of which sum and interest the said purchaser has, in pursuance of the said terms, furnished his eighteen several promissory notes, all bearing even date herewith and drawn as follows, to wit:

1st. One for the sum of three thousand dollars, drawn to the order of and endorsed by J. Aleix, and made payable one year after date, and five for a like sum of three thousand dollars each, drawn by him, the said purchaser, to the order of and endorsed by himself, and made payable, respectively, in two, three, four, five, and six years after date, these said six notes being for the said principal sum of eighteen thousand dollars.

2d. And twelve also drawn by him, the said purchaser, to the order of and endorsed by himself, being for and in liquidation of the interest above stipulated, and made payable, respectively, two for the sum of six hundred and thirty dollars each, in six months and one year after date; two for the sum of five hundred and twenty-five dollars each, in eighteen months and two years after date; two for the sum of four hundred and twenty dollars each, in thirty months and three years after date; two for the sum of three hundred and fifteen dollars each, in forty-two months and
215 four years after date; two for the sum of two hundred and ten dollars each, in fifty-four months and five years after

date, and two for the sum of one hundred and five dollars each, in sixty-six months and six years after date.

All which notes, it is distinctly understood, if not paid at maturity, are to bear interest thereafter, at the rate of eight per centum per annum, until final payment, and all which, having been duly paraphed by me, notary, to identify them with this act, were delivered to the said George Morgan, president as aforesaid, who hereby acknowledges the receipt thereof.

And, in order to secure the full and punctual payment at maturity of the aforesaid promissory notes, the said purchaser doth hereby mortgage, affect, and specially hypothecate the said described property in favor of the said "Mechanics' and Traders' Bank of New Orleans," or of any future holder or holders of the said notes, promising not to sell, alienate, nor encumber the same to the prejudice of this mortgage.

And, as additional security in the premises, the said purchaser hereby binds and obligates himself to cause the buildings on the said property to be duly insured against fire, without delay, to the amount of at least eight thousand dollars, and immediately thereupon to transfer the policy of the same to the said "Mechanics' and Traders' Bank of New Orleans," to be retained by it until the full and final payment of the aforesaid promissory notes.

Thus done and passed in my office, at the city of New Orleans aforesaid, in the presence of Auguste Commandeur and
216 Ernest Granet, witnesses of lawful age and domiciliated in this city, who hereunto subscribed their names, together with the said parties and me, the said notary, this fourteenth day of March, in the year of our Lord one thousand eight hundred and fifty.

(Original signed) GEO. MORGAN, *Pres't.*
G. J. LORD.
E. GRANET.
A. COMMANDEUR.
H. B. CENAS,
Not. Pub.

On the original of the foregoing act is written:

"I, register of conveyances, certify that the present act has been this day recorded in my office in Book No. 50, fo. 399.

"New Orleans, this twenty-third day of March, 1850.

"(Signed) F. B. VINOT, *D'y R'g.*"

I, Ernest Eude, a notary public, duly commissioned and sworn, in and for the parish of Orleans, State of Louisiana, residing in said city, do hereby certify the foregoing act and certificate to be true copies of the original act and of the original certificate on file in the notarial records of Hilary Breton Cenas, late a notary public
217 in this parish of Orleans, which are in my possession as custodian thereof.

In faith whereof I, said notary, hereunto set my hand and affix my seal of office, at the city of New Orleans, on this 28th day of

March, A. D. 1866, and in the 90th year of the Independence of the United States of America.

[SEAL.] (Signed) E. EUDE,
Notary Public, General Custodian of all Notarial Records of Notaries out of Office.

(Stamp.)

Exhibit Marked "Landreaux." Filed May 22, 1885.

ETATS UNIS D'AMÉRIQUE,
Etat de la Louisiane, ville de la N'elle Orleans:

21 Fevrier 1867.
Remplacement d'hypothêque par
Mr. & M'elle Landreaux
fav'r
L'Association Consolidée.

Aujourd'hui, vingt & un Fevrier mil huit cent soixante-sept et dans la 91me année de l'Indépendance Americaine. Pardevant Amédée Ducatel, notaire public, dûment commissionné pour cette ville et la Paroisse d'Orleans, y résidant et en présence des témoins ci apèrs nommés et soussignés.

218 Ont comparu: Mons'r Henry Peychaud, de cette ville, agissant comme président de l'Association Consolidée des cultivateurs de la Louisiane, etablie en cette ville, et en vertu d'une résolution prise par les directeurs et administrateurs de la dite institution dans leurs séance du premier Fevrier (1876).

Et Mons'r Albin Rochereau, demerant en cette ville, agissant pour et aux noms de Mons. Pierre ou Pedro Landreaux, et de M'elle Marie Louise Landreaux, demeurant a Paris, France, en vertu de la procuration qu'ils lui ont donnée par acte devant Eugene Francois Lavocat et son collegue, notaires a Paris, date du dix Novembre, dernier (1866), suivant certificat de S. Magner, notaire en cette ville en date du treize Fevrier courant, a annexé pour ecours, d'autre part.

Lesquels ont exposé: Que suivant passé devant le notaire soussigné en date du seize Decembre mil huit cent quarante, Mons'r Pierre Landreaux et Dame Héloise Lavigne, son épouse, dont le dit sieur Pierre ou Pedro Landreaux et la dite De'lle Marie Louise Landreaux sont les seuls héritiers, se sont reconnus débiteurs envers la dite Association Consolidée, 1°, de la somme de cent un mille piastres montant de deux cents actions de *aug* cents piastres chaque du fonds capital de la dite Association Consolidée, 2°, et de la somme de quarante-cinq mille* piastres, montant du credit qui leur a été accordé sur ces actions, et ont hypothequé pour guaranter les dites sommes.

1'ent. Une habitation sucrière nommé "L'Espérance" située en la paroisse St. Jean Baptiste en cet Etat, rive gauche du fleuve
219 Mississipi a environ quinze lieus au dessus de cette ville de la Nouvelle Orléans, mesurant environ trente-cinq arpents de face, plus ou moins, sur une profondeur de quarante arpents (les vingt-six arpents de la partie supérieur formant beaucoup dans la profondeur), borne dans la partie supérieure par la propriétée de

Mons. Thomas Lee, et dans la partie inférieure par celle ci-devant appartenant à G. Croghan. Ensemble toutes les batisses, constructions, circonstances et dépendances, &ce., &ce., de la dite terre ou habitation.

2'ent. Et soixante dix-sept esclaves attachés à el'xploitation de la dite terre.

Que désirant disposer librement de cette terre ou habitation les héritiers susnommés du dit sieur Pierre Landreaux et de la Dame, son épouse, décédés, demandèrent à la dite Association Consolidée, par leur mandataire le dit sieur A. Rocherraux, de se désister de son hypothèque, lui offrant de la remplacer par une autre sur les proprjetes ci-aprés décrites.

Que cette offre a été acceptée par les directeurs et administrateurs de la dite Association Consolidée dans leur dite séance du premier Février courant, et qu'il s'agit par les présentes d'effecteur du'ne manière régulière le replacement d'hypotheque dont il est ci-dessus question.

En conséquence, le dit sieur Albin Rocherau, en sa qualité susexprimée, affecte, oblige et hypotheque spécialement, par privilége et préférence, par ces présentes en faveur de la site Association Consolidée des Cultivateurs de la Louisiane, ce accepter par le dit
220 sieur H'y Peychaud, président sous les meures chargés clauses et conditions que celles inserée, dans l'acte devant le notaire soussigne du seize Décembre mil huit cent quarante (auquel acte il est référé pour plus de certitude), et à la sureté et garantie des dites deux cents actions, seulement, le crédit accordé sur les dités actions ayant été remboursé en capital et intérets.

1°. Un terrain situé en cette ville, Faubourg Ste. Marie, premier district, dans l'ilet compris entre les rues Philippa (aujourd'hui Dryades), Perdido, Baronne et Union, désigné par le No. quatre sur un plan déposé en la seconde cour du district de cette ville. Le dit terrain formant un trapeze, mesure (en pieds Francais) trente-trois pieds sept pouces face a la rue Baronne sur une profondeur oblique courant entre lignes paralleles a la rue Perdido, savoir: Celle qui est du coté de la site rue Perdido ayant cent quinze pieds de long, et l'autre du coté de la rue Union ayant cent onze pieds, coupées dans le fond par une ligne de trente-trois pieds, perpendiculaire aux lignes laterales. Ensemble toutes les batisses, constructions circonstances et dépendances du dit lot de terre, droits et privileges y attachés, sans exception ni réserve.

2°. Et un lot de terre située au Faubourg St. Marie, premier district de cette ville dans l'ilet compris entre les rues Pigeonnier, alias Perdido, St. Jean, Poydras et du cirque désigné par le numéro dix-sept sur un plan dréssé par Louis St. Pilié, le premier Octobre, 1836,
déposé sous le No. six du livre des plans de Joseph B. Marks,
221 alors notaire en cette ville. Le dit lot de terre mesurant (en pieds Americain) vingt-cinq pieds onze pouces et une ligne de face a la dite rue Perdido, cent douze pieds un pouce de profondeur et face à la rue St. Jean, et vingt-six pieds deux pouces de large sur la ligne du fond: Ensemble toutes les batisses construc-

tions, circonstances et dépendances du dit lot de terre sans exception ni réserve.

Ces propriétés appartienent bien et legitimement au dit sieur Pierre ou Pedro Landreaux et a la D'elle Marie Louise Landreaux, comme seuls heritiers ainsi qu'il a été dit a dessus, de leur père Pierre Landreaux des biens duquel ils ont été mis en possession par décret de la seconde cour du district de la Nouvelle-Orléans.

Et le dit sieur Pierre Landreaux était propriétaire des sus dits deux lots de terre, au moyen de l'acquisition qu'il en a faite de la maniere suivante, savoir: La propriété ci-dessus premierement décrite, de Pélagic et Martonne Dauphin, suivant, acte du quinze Octobre mil huit cent trente-six devant Félix Grima, notaire, en cette ville; et la propriété ci-dessus secondement décrite de P. H. Gallwey suivant acte du vingt-neuf Août mil huit cent trente-huit devant Ch's Bodousquié, notaire, en cette ville.

Suivant un certificat du conservateur des hypothêques en cette ville en date de ce jour, et ci-annexé il appert qu'il n'y a point d'hypothêque enregistrée contre le dit sieur et la dite D'elle Landreaux, sur les propriétés sus-décrites et hypothequées.

Et par suite de ce qui précède, le dit sieur Henry Peychaud donne par ces présentes main levé pure et simple et consent
222 la rediation entiere et définitive de l'hypothêque que suivant l'acte précité du seize Novembre mil huit cent quarante devant le notaire soussigné, le dit sieur Pierre Landreaux et la Dame Héloise Lavigne, son épouse, ont consentie sur l'habitation sucrière "Esperance" ci-dessus décrite et les esclaves y attachés pour les causes y exprimés.

Dont acte fait et passé en l'etude a la N'elle-Orléans, les jours, mois et au susdits, en présence de Messrs. Henry Ducatel et Andrée Pélanne temoins compétens qui ont signé avec les comparans et le notaire après lecture faite.

(Signée) ALBIN ROCHEREAU.
H'Y PEYCHAUD.
HENRY DUCATEL.
A. PÉLANNE.
AMÉDÉE DUCATEL,
Not. Pub.

* Quatre cent cinquante, ce renvoi approuvé les mots "regulière" et "Octobre" interlignés bons.

Pour copié conforme,

[SEAL.] (Signed) AMEDÉE DUCATEL,
Not. Pub.

222a *Translation.*

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

February 21, 1867. Substitution of mortgage by Mr. & Miss Landreaux in favor of the Consolidated Association of the Planters of Louisiana.

This day, the twenty-first of February, one thousand eight hundred and sixty-seven, and in the 91st year of American Independence, before Amedée Ducatel, notary public, duly commissioned for this city and the parish of Orleans, therein residing, and in presence of the witnesses hereafter named and undersigned, appeared Mr. Henry Peychaud, of this city, acting as president of the Consolidated Association of the Planters of Louisiana, established in this city, and by virtue of a resolution adopted by the directors and administrators of said institution at their meeting of first of February (1876), and Mr. Albin Rochereau, residing in this city, acting for and in the names of Mr. Pierre or Pedro Landreaux and of Miss Marie Louise Landreaux, residing in Paris, France, by virtue of a power of attorney which they have given him by act before Eugene François Lavocat and colleague, notaries in Paris, dated the tenth day of November last (1866), as appears by a certificate of
222b S. Magner, notary, in this city, bearing date the thirteenth of February instant, hereto annexed for reference, of the other part, who have declared that according to an act passed before the undersigned notary under date sixteenth of December, one thousand eight hundred and forty, Mr. Pierre Landreaux and Mrs. Heloïse Lavigne, his wife, of whom the said Mr. Pierre or Pedro Landreaux and the said Miss Marie Louise Landreaux are the sole heirs, have acknowledged themselves to be indebted unto the said Consolidated Association in, 1st, the sum of one hundred and one thousand dollars, amount of two hundred and two shares, of five hundred dollars each, of the capital stock of said Consolidated Association; 2d, the sum of forty-five thousand* dollars, amount of credit accorded them on said shares, and have mortgaged to secure the said sums.—

First. One sugar plantation, known as "L'Esperance," situate in the parish of St. John the Baptist, in this State, on the left bank of the Mississippi river, about fifteen leagues above this city of New Orleans, measuring about thirty-five arpents front, more or less, by a depth of forty arpents (the twenty-six arpents of the upper portion closing considerable in the depth), bounded on the upper portion by the property of Mr. Thomas Lee and on the lower side by that formerly belonging to G. Croghan, together with the buildings, improvements, appurtenances, dependencies, etc., etc., of the
222c said estate or plantation.

Second. And seventy-seven slaves attached to the working of the said estate.

That, desiring to dispose freely of this estate or plantation, the heirs above named of the said Mr. Pierre Landreaux and of his said

wife, deceased, by their agent, the said Mr. A. Rochereau, have requested the said Consolidated Association to abandon its mortgage, they offering to substitute therefor another mortgage on the property hereinafter described.

That said offer has been accepted by the directors and administrators of said Consolidated Association at their said meeting of first February instant, and that it is sought by these presents to effect in a formal manner the substitution of the mortgage above referred to.

Therefore the said Mr. Albin Rochereau, in his capacity above mentioned, affects, obligates, and mortgages specially, with privilege and preference by these presents, in favor of the said Consolidated Association of the Planters of Louisiana, here accepted by the said Mr. Henry Peychaud, president, subject to the same charges, clauses, and conditions as those inserted in the act before the undersigned notary of the sixteenth December, one thousand eight hundred and forty (to which act reference is made for greater certainty),
222*d* and for the security and guara-tee of the said two hundred and two shares alone, the credit accorded upon the said shares having been reimbursed, capital and interest—

1st. A lot of ground situate in this city, Faubourg Ste. Marie, first district, in the square bounded by Philippa (now Dryades), Peraido, Baronne, and Union streets, designated by the number four upon a plan deposited in the second district court of this city, the said lot forming a trapeze, measures (French measure) thirty-three feet seven inches front on Baronne street by an oblique depth between parallel lines to Perdido street, to wit, the one on the side of said Perdido street being one hundred and fifteen feet long, and the other, on the side of Union street, being one hundred and eleven feet, divided in the rear by a line thirty-three feet perpendicular to the lateral lines, including all the buildings, improvements, appurtenances, and dependencies of said lot of ground, rights and privileges thereto appertaining, without exception or reservation.

2d. And a lot of ground situate in the Faubourg Ste. Marie, first district of this city, in the square bounded by Pigeonnier, *alias* Perdido, St. John, Poydras, and Circus streets, designated by the number seventeen on a plan drawn by Louis H. Pilié first October, 1836, deposited under the number six in book of plans of Joseph B. Marks, then notary, of said city. The said lot of ground measures
222*e* (in American measure) twenty-five feet eleven inches and one line front on said Perdido street, one hundred and twelve feet one inch in depth and front on St. John street, and twenty-six feet two inches in width on the rear line, including all the buildings, improvements, appurtenances, and dependencies of said lot of ground, without exception or reservation.

The property above described belong- truly and legitimately to the said Mr. Pierre or Pedro Landreaux and to the said Miss Marie Louise Landreaux, sole heirs, as aforesaid, of their father, Pierre Landreaux, of whose estate they were put into possession by a decree of the second district court of New Orleans.

And the said Mr. Pierre Landraux was owner of the above-mentioned two lots of ground, which were acquired by him in the follow-

ing-described manner, to wit: The property first above described from Pélagie and Martonne Dauphin, according to an act of fifteenth October, one thousand eight hundred and thirty-six, before Felix Grima, notary, in this city, and the property secondly above described from P. H. Gallwey, according to act of twenty-ninth August, one thousand eight hundred and thirty-eight, before Charles Bodousquié, notary, in this city.

According to certificate of the recorder of mortgages in
222*f* this city, dated this day and hereto annexed, it appears there is no mortgage registered against the said Mr. and Miss Landreaux on the property above described and mortgaged.

In consequence of the foregoing the said Mr. Henry Peychaud gives by these presents a pure and simple release of the mortgage given by the said Mr. Pierre Landreaux and Mrs. Heloïse Lavigne, his wife, on the sugar plantation "L'Esperance," above described, and the slaves thereunto appertaining, for the causes and according to the term- set forth in the above-cited act of the sixteenth November, one thousand eight hundred and forty, before the undersigned notary, and he hereby consents to the entire and final cancellation of said mortgage; which act — made and passed in office, in New Orleans, on the day, month, and year above named, in presence of Messrs. Henry Ducatel and André Pélanne, competent witnesses, who have signed with the appearers and the notary after reading the same.

(Signed) ALBIN ROCHEREAU.
HENRY PEYCHAUD.
HENRY DUCATEL.
A. PÉLANNE.
AMÉDÉE DUCATEL,
Not. Pub.

* Four hundred and fifty; correction approved. The words "regular" and "October," interlined, approved.

A true copy.
[SEAL.] (Signed) AMÉDÉE DUCATEL, *N. P.*

223 *Certified Copy of Sale of Land, Marked Exhibit Meyer "A." Filed May* 22, 1885.

THE STATE OF LOUISIANA,
City of New Orleans, Parish of Ouachita:

Be it known that on this twelfth day of May, in the year of our Lord one thousand eight hundred and seventy-nine, in the presence of the witnesses hereinafter named and undersigned, we, Meyer, Weis & Co., a commercial firm of this city, composed of Isaac Meyer, of New York, Victor Meyer, Adolph Meyer, and Julius Weis, of the city of New Orleans, Louisiana, represented herein by Adolph Meyer, acting for and making this sale for said company, have sold, conveyed, and delivered, and by these presents does sell, bargain, transfer, assign, set over, and deliver, unto Herman Meyer, a resident of

the parish of Ouachita, in this State, represented herein by Ed. Johnson, who is authorized to accept this deed of sale for said Herman Meyer, who is here present and accepting this sale for said Meyer, his heirs and assigns, the following property, to wit: All that certain tract of land situated in the parish of Ouachita, in this State, being known and described as the Francis Caveat confirmation, situated on both sides of Bayou De Siard, marked and designated on the official maps of the United States surveys class "B," No. 417, and as section No. 40, in township No. 18 north, of range No. 4 east, in the district of lands subject to sale at Monroe, La., north of Red River, and all that portion of the Patrick Poor confirmation on the opposite or north side of the Bayou De Siard, and that portion on the south side of said bayou commencing at the Caveat confirmation and extending west to the old ditch, con-
224 taining (17) seventeen acres in all, the land described in this deed, five hundred and eighty-one $\frac{23}{100}$ acres, being the same plantation acquired by J. T. Mason from Malinda T. Mason, and described, lying between the places in the possession of Wm. H. Bradly and the place owned by Mrs. Narcissa Jane Willson on both sides of said bayou, being same place purchased by Malinda T. Mason on the 15th January, 1853, and by Mrs. Emily Mason from J. Frank Pargoud 19th Feb'y, 1873, and by Boyce Rills from Thos. C. Aby, tax collector, at tax sale on 3d day of December, 1877, deed dated 8th December, 1877, and by these vendors from Boyce Rills on 27th February, 1878; to have and to hold under the same warranty that we, the said Meyer, Weis & Co., obtained, subrogating the said H. Meyer to all our rights and actions in and to said premises, warranting and defending only against ourselves, our heirs, executors, administrators, and assigns forever. The parties to this act agree to dispense with the production of certificate of mortgages as required by the civil code. The price for which this sale is made is the sum of five thousand dollars (5,000.00), cash in hand paid, the receipt of which is hereby acknowledged, and grant full discharge therefor.

In testimony whereof we hereunto sign our names in the presence of Wimiam A. Labatt and L. Clauss, lawful witnesses, of age and domicil, who hereunto sign their names on this the twelfth day of May, A. D. 1879.

MEYER, WEISS & Co.,
EDW. J. JOHNSON,
Accepting for Herman Meyer.

Witnesses:
W. A. LABATT,
L. CLAUSS.

225 This day before me, the undersigned notary, came and appeared Adolph Meyer, one of the members of the firm of Meyer, Weis & Co., of this city, who declared and acknowledged that he had signed and executed the foregoing instrument of writing in the name and on behalf of his said firm for the uses and purposes therein set forth.

Witness my hand and seal of office, at New Orleans, this twelfth day of May, eighteen hundred and seventy-nine.

[SEAL.] THEO. GUYOL.

I certify this to be a true and correct copy of the original on file in my office and of record in Not. Book X, pages 234, 235, and 236.

[SEAL.] (Signed) ED. BALL, *D'y Cl'k.*

Filed 16th May, 1879, and duly recorded in Not. Book X, pages 234, 235, and 236.

In testimony whereof I hereunto sign my name and affix my seal of office the date above filed.

[SEAL.] (Signed) R. W. McCLENDON, JR., *D'y Recorder.*

Sale Marked Exhibit Meyer "B." Filed May 22, 1885.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

226 Be it known that on this third day of the month of January, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States of America the one hundred and fourth, before me, Edgar Grima, a notary public, duly commissioned and sworn, in and for this city and the parish of Orleans, therein residing, and in the — witnesses hereinafter named and undersigned, personally appeared Mr. Henry Shepherd, of the State of West Virginia, who declared that, for the consideration hereinafter expressed, he does by these presents grant, bargain, sell, assign, and convey, without any warranty whatsoever, except as to his own acts and deeds, unto Mr. Herman Meyer, of Monroe, Louisiana, present and accepting, purchasing for himself, his heirs and assigns, and acknowledging delivery thereof, a certain tract of land or cotton plantation, known as "Ingleside," situate or being on both sides of Bayou De Saird, in the parish of Ouachita, State of Louisiana, and being that part of the tract of land formerly known as the "Killain" tract, which lies north of the Vicksburg, Shreveport and Texas railroad, bounded above by lands formerly owned by E. W. Warfield, on the south by said railroad, and on the west by lands now or lately owned by W. J. Q. Baker, containing twelve hundred and fifty acres of land, more or less, according to the survey made by L. N. Polk, parish surveyor, of the said parish of Ouachita, as per sketch hereto annexed, signed by the said surveyor, dated June 3d and 4th, 1879, being the same
227 property which the said Henry Shepherd acquired by purchase from Frederick Ernest, by an act passed before Theo. Guyol, notary public, in this city, on the sixth of May, eighteen hundred and seventy-five, recorded in Notarial Book "V," page 311, in the recorder's office of the parish of Ouachita.

It is well understood by and between the said parties hereto that the said Henry Shepherd makes the present sale without warranty

of title, except from his act, and transfers only such rights and title as he acquired by the said act of the 6th of May, 1875, before T. Guyol, and the said purchaser accepts this sale without warranty of title on the part of the said vendor, as above expressed; to have and to hold the said described property unto the said purchaser, his heirs and assigns, forever by virtue hereof, and the said vendor do-hereby moreover transfer unto the said purchaser all the rights and actions of warranty to which he is or may be entitled against all the former owners and proprietors of the property herein conveyed, hereby subrogating the said purchaser to all the said rights and actions to be by him enjoyed and exercised in the same manner as they might have been by the said vendor.

The present sale is made and accepted for and in consideration of the price and sum of thirteen thousand five hundred dollars; in deduction whereof the said purchaser has paid the sum of four thousand five hundred dollars in ready current money at the execution hereof unto the said vendor, who acknowledges the receipt thereof, and for the balance of said price, to wit, the remaining sum of nine thousand dollars, the said purchaser has produced and
228 furnished six certain promissory notes subscribed by him, under date of this day, to his own order and endorsed by himself, all bearing interest at the rate of eight per cent. per annum from date until paid, and made payable at the Citizens' Bank of Louisiana, in this city, respectively, as follows, viz: Two of the said notes for the sum of twenty-one hundred and fifty $\frac{1}{100}$ dollars, each payable respectively at one and two years after date; two notes for the sum of eighteen hundred and twelve $\frac{28}{100}$ dollars, each payable respectively at one and two years after date, and two notes for the sum of five hundred and thirty-seven $\frac{54}{100}$ dollars, each also payable respectively at one and two years after date, which said notes, after having been paraphed "*ne varietur*" by me, notary, to be identified with the present act, have been delivered to the said vendor, who does hereby acknowledge receipt thereof.

In case it shall become necessary to institute legal proceedings for the recovery of the amount of the said notes, respectively, or of any part thereof, the said purchaser does hereby bind himself to pay the fees of the attorney-at-law who may be employed for the purpose, which fees are hereby fixed at five per cent. on the amount which may be sued for.

Now, in order to secure the full and punctual payment of the said notes respectively at maturity, together with all the interest thereon, attorney's fees, and costs in case of suit, the vendor's lien and privilege is hereby specially retained, and the said purchaser does hereby
229 mortgage, effect, and specially hypothecate the said described property in favor of the said vendor and to inure to the use and benefit of any and all future holder or holders of the said notes, the said purchaser hereby promising and binding himself not to sell, alienate, or encumber the said property to the prejudice of the present act.

The said parties hereto do hereby dispense with the production of a certificate from the recorder of the parish of Ouachita showing

what mortgages or privileges, if any, stand in the name of said vendor recorded against said property herein conveyed, hereby exonerating me, notary, of all responsibility in the premises.

The said parties now declare that all taxes due and exigible on the said property are paid and the said Harman Meyer does hereby assume and bind himself to pay, at his own cost and expense, all taxes which shall be due or may — payable on the said property in the current year 1880.

Thus done and passed in my office, at the city of New Orleans, on the day and in the month and year first before written, and in the presence of Messrs. Charles G. Andry and George Grima, both of this city, competent witnesses, who have signed these presents with the said appearers and me, notary, after due reading of the whole.

(Original signed) HENRY SHEPHERD.
HARMAN MEYER.
CHAS. G. ANDRY.
GEO. GRIMA.
EDGAR GRIMA,
Not. Pub.

230 I hereby certify this to be a true copy of the act in my office and of record in Notarial Book X, pages 469, 470, and 471, and in Mortgage Book P, pages 309, 310, & 311, this 10th Nov., 1884.

[SEAL.] (Signed) ED. BALL, *D'y Clerk.*

Filed 10th Jan'y, 1880, and duly recorded in Notarial Book X, pages 469, 470, and 471, and in Mortgage Book P, pages 309, 310, and 311.

[SEAL.] (Signed) R. W. McCLENDON, *Recorder.*

Sale, Marked Exhibit Meyer "C." Filed May 22, 1885.

STATE OF LOUISIANA, *Parish of Ouachita:*

Be it known that on this the thirteenth day of December, A. D. eighteen hundred and eighty, before me, Isiah Garrett, deputy clerk fifth district court and *ex officio* recorder and notary public in and for the said parish and State, personally came and appeared Charles J. Boatner, acting herein as agent and attorney-in-fact for Henry Frellson, of the city of New Orleans, in the State of La., as per
231 power of att'y of date 4th Dec., 1880, made part hereof, who declared and acknowledged that for the price hereinafter expressed he has sold, conveyed, and delivered, and by these presents does sell, bargain, transfer, assign, and set over, unto Herman Meyer, of the parish of Ouachita, State of Louisiana, present and accepting the sale for himself, his heirs and assigns, the following property, together with the improvements and appurtenances thereunto belonging, to wit: A cotton plantation, known as "Limerick," situated and lying on Bayou De Siard, in Ouachita parish, Louisiana, having front and being on both sides of said bayou, and more particularly described as follows: The same being bounded on the upper or east

side by the Ingleside plantation, now owned by Herman Meyer, the division line between said plantations (Limerick and Ingleside) north of said bayou, running north 9° east and extending on the south side of said bayou to the township line between townships seventeen and eighteen north, range 4 east; bounded on the lower or west side by the plantation formerly owned by Mrs. Emily Mason, but now by this vendee, fronting ten arpents, more or less, on both sides of said bayou, and running back on each side of said bayou so as to include all the lands belonging to and attached to said Limerick plantation as it was owned and possessed by Jonathan Morgan in his lifetime, being all of confirmation to Elisha Nelson (B. 451), and all that part of confirmation to David Gleason (B. 2086) not sold to Oliver J. Morgan, said confirmations being in township 18, R. 4 E., containing twelve hundred (1,200) acres, more or less; also all the lands purchased from the United States by Jonathan Morgan, in townships Nos. 17 and 18, R. 4 E., ex-
232 cept that part of same that lies west of a line to begin at the railroad directly south of the southwest corner of the Francis Caveat confirmation, and runs south to the back line of the tract, which will be a point one-quarter of a mile east of the middle of section five (5), township seventeen (17) N., R. 4 E., and consists of the following legal subdivisions, viz: All of lots three (3) and four (4), section thirty-two, township eighteen (18) N., R. 4 E., being south of the railroad, and west half of the northeast quarter and east half of northwest quarter, and lot No. 1, sec. 5, township 17 N., R. 4 E., containing in the aggregate three hundred and seven $\frac{86}{100}$ (307.86) acres, and being the same property acquired by this vendor at executor's sale of the property of W. J. Q. Baker on the 19th day of October, A. D. 1880, as per act of record in my office in Notarial Book Y, pages 77, 78, and 79:

To have and to hold the said property unto the said purchaser, his heirs and assigns, forever.

The parties to this act agree to dispense with the production of the certificate of mortgage required by article 3364 of the Civil Code of this State, and exonerate me from any liability in the premises.

The price for which the above sale is made is the sum of fourteen thousand dollars ($14,000.00), paid and to be paid as follows: Twenty-five hundred dollars cash in hand paid, the receipt whereof is hereby acknowledged, and for the remainder the said Herman Meyer has executed his four several promissory notes of even date here-
233 with, each for the sum of twenty-eight hundred and seventy-five ($2,875.00) dollars, payable to his own order and by him endorsed in blank, and due, respectively, on the 13th day of December, 1881, 1882, 1883, and 1884, each note bearing eight per cent. interest from date. The property herein conveyed is sold subject to the mortgage in favor of the Consolidated Association of the Planters of La., and against which the said Henry Frellson does not in any way warrant, if any such exists, and which notes I have this day paraphed "*ne varietur*" in order to identify them and each of them more fully with this act, and the said notes were delivered to Chas.

J. Boatner, agent and attorney-in-fact, who hereby acknowledges receipt thereof.

Now, therefore, in order to secure the full and punctual payment of said notes, together with the interest accruing thereon or any costs which may be incurred in the collection of the same, be it in attorney's fees, which are hereby fixed at ten per cent. on the amount sued for in case of resort to judicial proceedings, or otherwise, the said Herman Meyer declares that he specially mortgages and hypothecates in favor of the vendor or any *bona fide* holder or owner of said notes the property herein conveyed with any improvements which may be put thereon, and promises not to alienate or incumber said property to the prejudice of this mortgage.

Thus done and passed in the presence of Robert Richardson and Moses J. Liddell, witnesses of lawful age and domiciliated in this parish, who hereunto sign their names, together with the said
234 parties and me, the said d'y clerk, on this 13th December, in the year of our Lord one thousand eight hundred and eighty.

HENRY FRELLSON,
Per CHAS. C. BOATNER,
Agent & Att'y-in-Fact.
HERMAN MEYER.
[SEAL.] I. GARRETT,
D'y Cl'k and ex Officio Recorder.

Attest: R. RICHARDSON.
M. J. LIDDELL.

I certify this to be a true and correct copy of the original on file in my office and endorsed thus: Filed 13th Dec'r, 1884, and duly recorded in Not. Book Y, pages 120, 127, 128, and 129, and in Mortgage Book O, pages 85, 86, 87, and 88. I. Garrett, d'y cl'k 5 dist. court.

[SEAL.] (Signed) ED. BALL, *D'y Cl'k.*

Endorsed: Filed Dec'r 13th, A. D. 1880, and duly recorded in Notarial Book Y, pages 126, 127, 128, and 129, and in Mortgage Book O, pages 85, 86, 87, and 88.

In testimony whereof I have hereunto signed my name and affixed my seal of office the date above filed.

[SEAL.] (Signed) I. GARRETT, *D'y Cl'k.*

235 *Replication to Answer of Darcautel et als. Filed July* 2, 1885.

U. S. Circuit Court, Eastern District of Louisiana. In Chancery.

WILLIAM CRESSEY
vs.
CONSOLIDATED ASSOCIATION OF THE PLANTERS OF LOUISIANA. } No. 10432.

To the hon. the judges of the circuit court of the United States for the eastern district of Louisiana:

The replication of William Cressey, complainant herein, to answers of Nicholas Armand Caycault, Armand Darcautel, Levi J. Harris, Charles E. Fenner, Charles T. Dugazon, Henry Beer, Herman Meyer, Emile Rost, Marco Givannovich, Charles Getzinger, Joseph Le Bourgeois, Albert Dufour, Mrs. Josephine Dejan and Pierre Dejan, her husband; John Chaffe and Charles Chaffe, Mrs. Elizabeth Eugenie Granet, widow of George Josiah Lord; Mrs. Sarah E. Noble and John I. Noble, her husband; Mrs. Anna Brand Le Doux, Miss Annie Le Doux, Mrs. Gabriel Le Doux, Nicholas M. Benachi, Mrs. Elmira Verret, widow of Marshal Le Boeuf; Mrs. Elodie Verret and her husband, L. Leon Barnard; N. O. Canal and Banking —, Pedro Landreaux, Marie Landreaux, Dominque Gast, Robert Layton and Malinda T. Layton, his wife; Pierre Lanaux, Mrs. Julia Riley and Edward De Hart, her husband;
236 Bartholemy Beaubay, Louis Ducasse, Martha Ann McNeil, Margaret McNeil, Auguste Dubail, Charles J. Villeré, Réné T. Beauregard, Henry T. Beauregard, Jules Lavergne, Idalie Lavergne, widow of Raoul La Branche; Philip Lavergne, Mrs. Louise de Ballatier, widow of W. C. C. Claiborne, and W. C. C. Claiborne, Jr., testamentary executor, representatives of the estate and succession of W. C. C. Claiborne; The Citizens' Bank of Louisiana, The Factors' & Traders' Insurance Company of New Orleans, Bernard Lehmann, Meyer Lemann, Richard T. Hanson, Auguste Laverte, Colin McNeil, Valerian Martin, Etienne Marie, and J. Fortune Zeringue, defendants.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto, saith that he will aver and prove his said bills to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants *is* uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answers contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bills he hath already prayed.

237 *Admissions upon Hearing as to Defendants Named. Filed Jan'y 29th*, 1887.

U. S. Circuit Court, Eastern District of La. In Equity.

WILLIAM CRESSEY
vs.
THE CONSOLIDATED ASSOCIATION OF PLANTERS OF LA., *et al.* } No. 10432.

1. The defendants, Bartholemy Beaubay, Hermann Meyer, Charles Gitzinzer, Pedro Landreaux, Marie Landreaux, Meyer Lemann, Bernard Lemann, R. T. Hanson, Mrs. George Josiah Lord, and The Citizens' Bank of La., admit all matters of fact averred in complainant's original and amended bills of complaint herein, excepting as hereinafter qualified or denied, but do not admit any of the conclusions of law averred in said bills.

2. Said defendants deny that the proceeds of the bonds of the State of Louisiana issued to said Consolidated Association of the Planters of Louisiana, or any part thereof, were applied to the individual uses of the stockholders of said association or of any of them, but admit that such proceeds were applied to the use of said association.

3. Said defendants deny that complainant has any lien or privilege upon the assets of said Consolidated Association to secure the payment of the obligations upon which he sues or otherwise,
238 and they deny that said obligations are due and owing by said association.

4. Said defendants deny that the extension of time or times for payment of the bonds issued by the State of Louisiana to said association was for the convenience or accommodation of the stockholders thereof or at their instance, and they deny that the stockholders thereof were under any obligation to provide funds for their payment beyond the amount of the deficiency of assets at the time of its declared insolvency.

5. Said defendants deny that the alleged liability for said shares of stock resting upon their property entered into or was an element in the price which they paid for the same.

6. Said defendants deny that they procured the passage of the act of March 30, 1878 (ex. session No. 20), or in manner participated therein.

7. Said defendants do not admit that said association owes the outstanding liabilities averred in said bills, but leaves complainant to make such proof thereof as he can.

Complainant admits the truth of all the averments of fact contained in said defendants' answer herein, excepting those in the 12th paragraph contained, which he denies, but he does not admit any of the conclusions of law averred in said answer.

And it is agreed by and between said complainant and
239 said defendants that all the acts of the Legislature of Louisiana relating to the Consolidated Association of the Planters

of Louisiana shall be considered in evidence in this case and may be read as such by either party from the official publications thereof.

These defendants also admit the facts averred in the petition of intervention of the State of Louisiana herein so far as they affect these defendants, excepting as hereinafter stated, but they do not admit any of the conclusions of law averred in said petition. Defendants do not admit the liabilities of the State of Louisiana or of said Consolidated Association as therein averred; they do not admit subrogation of said State to the rights of the holders of the bonds funded under the act of 1874, and they deny the liability of the stockholders in law to reimburse the State for any amounts paid by it on account of said association or of the bonds of the State issued to it.

N. O., 29 Jan'y, 1887.

(Signed) HORNOR & LEE,
For Complainant.
R. H. MARR,
ROUSE & GRANT,
Solicitors for Defendants Named.
JAMES MOISE,
For M. J. Cunnungham, Attorney General.

240 The statutes of the State of Louisiana relating to the Consolidated Association — Planters of Louisiana:

An act to incorporate the subscribers to the Consolidated Association of the Planters of Louisiana.

Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That an institution shall be established under the title of the Consolidated Association of the Planters of Louisiana, the capital of which will amount to two millions of dollars, which will be raised by means of a loan obtained by the directors of the institution.

Sec. 2. Be it further enacted, That a subscription for a sum of two million and five hundred thousand dollars, divided in shares of five hundred dollars each, intended to secure the loan of two millions of dollars, shall be opened immediately after the passage of this act, under the inspection of five managers elected by ballot, by both houses. The books of subscriptions shall be opened every day from ten o'clock a. m. until three o'clock p. m., and when the said institution shall have begun its operations the said books shall continue open in one of the offices of said institution during and until the expiration of the term of six months next following, and then the books of said subscriptions shall be closed. Immediately after the expiration of six months, as aforesaid, the said managers, or a majority among them, shall proceed to make a correct statement
241 of these subscriptions, and in case the amount of the sums subscribed for should be more than two million and five hundred thousand dollars then the said managers shall deduct the

amount of such excess from the largest subscriptions in such manner as that no subscription shall be reduced in amount while any one remains larger, and in case of such a deduction the said managers shall cause lists to be made out of such apportioned subscriptions to enable every subscriber to know the number of shares allowed him, and should it happen that the total amount of the five thousand shares had not been subscribed at the time of closing the books of subscriptions then the said books shall be reopened on the first Monday of January in every year, under the inspection of the directors appointed, as will be specified hereinafter, and they shall remain open during the space of thirty days in every year until five thousand shares be subscribed for. The managers shall publish during twenty days previous, in the newspapers that are published in New Orleans, the day and place when the books of subscriptions shall be opened.

SEC. 3. Be it further enacted, That the subscriptions shall be made as follows, viz: Planters exclusively shall be entitled to subscribe, and the shares so subscribed for by them shall only be transferable to planters.

SEC. 4. Be it further enacted, That in order to procure the loan authorized by this act the president, directors, & Co. of the said institution shall deliver their bonds, bearing an interest of five per cent. per annum, payable half-yearly, and said bonds shall be at the rate of so many dollars in conformity to the negotiations that shall have taken place. These bonds shall be in the following terms, viz., bond for one-third of the net capital of two millions of dollars shall
242 be payable five years after date; bonds for a second third of the above capital shall be payable ten years after date, and, finally, bonds for the third and last instalment shall be payable fifteen years after date, and said bonds shall be written in the following words, viz:

(L. S.)

Know all men by these presents that the president, directors & Co. of the Consolidated Association of the Planters of Louisiana acknowledge to be indebted unto —— —— in the sum of —— dollars, which sum the said president, directors & Co. of the aforesaid association promise to pay in current money of the United States to the said —— ——, his or their heirs or assignees, on the — of ——, with interest at the rate of five per cent per annum, payable half-yearly, in the city of New Orleans and in one of the offices of this institution, viz., on the — day of —— and the — day of —— of every year until payment of the said principal sum.

In testimony whereof the president of the Consolidated Association of the Planters of Louisiana has signed these presents and caused his seal of office to be affixed thereto, at New Orleans, on the — day of ——, in the year of our Lord one thousand eight hundred and twenty-seven.

—— ——, *President.*
—— ——, *Cashier.*

And the said bonds shall be under the seal of said institu-
243 tion and signed by the president and countersigned by the cashier, and the individuals in favor of whom they shall have been subscribed shall have the right to transfer them, with his or their endorsement, either to the bearer or anybody else.

SEC. 5. Be it further enacted, That the subscribers of the Consolidated Association of the Planters of Louisiana shall give mortgages on immovable property for an amount equal to the shares for which they shall have subscribed; these mortgages shall be entered into to the satisfaction of the board, & no mortgage shall be accepted on land that should not be in a state of cultivation, and besides, that no dividends on the yearly profits of the institution shall be declared; those profits shall remain deposited as a guarantee and placed as hereafter mentioned, and the president, directors & Co. of the Consolidated Association shall not dispose of those profits but after the full reimbursement of the sums borrowed shall have been effected, as well as the interest.

SEC. 6. Be it further enacted, That there shall be delivered to the subscribers of the Consolidated Association of the Planters of Louisiana who shall have discharged the obligations of the above fifth section certificates of shares for the amount of those they shall have subscribed for, and they shall be entitled to a credit equal to the moiety of the total amount of their shares: Provided, That when they shall intend to make use of said credit they shall pay the interest for it at the rate that shall be fixed for the loans, and
244 they shall deliver their notes on bonds for the amount of the sums which they shall receive, and besides, there shall be opened a private account to each stockholder on the books of said institution for the dividends which shall be due to them, so that at the expiration of each year they may be creditors of the amount of their dividends in the same manner as if the payment was to be made immediately to them.

SEC. 7. Be it further enacted, That the subscribers to the said Consolidated Association be, and they are by the present act created, a corporation and body politic by the name and style of "The President, Directors & Co. of the Consolidated Association of the Planters of Louisiana," and so shall continue until the thirtieth day of June, in the year one thousand eight hundred and forty-two, and by that name shall be, and are hereby, made capable to buy, receive, and possess all kinds of property, either immovable or movable, and to loan, negotiate, sell, grant, alienate, demise, and dispose of the same, and to take mortgages and pledges, and to discount upon banking principles on such credit and on such security as they shall think advisable, provided it does not exceed in value the double of their capital, and to sue and be sued, plead and be impleaded, answer and receive answers, in all courts having competent jurisdiction, to have a seal of office, and the same to alter and renew at their pleasure, and to ordain and establish such by-laws and ordinances as they shall deem necessary and convenient for the government of this corporation, not being contrary to this act nor to the

Constitution or laws of the United States or to the constitu-
245 tion or laws of this State.

SEC. 8. Be it further enacted, That for the administration of the affairs of said corporation there shall be elected seven directors, who shall be chosen among the subscribers, who shall be elected every year in the house of the Consolidated Association of the city of New Orleans by the subscribers to the said institution. The election shall be made by the majority of votes that shall be received in a number equal to the shares subscribed for.

As soon as one thousand shares shall have been subscribed for, as provided in the second and third sections of this act, the managers shall publish, in at least two of the newspapers that are published in the city of New Orleans, that such a number of shares has been subscribed for, and by the same advertisement they shall appoint the day and place where the stockholders shall meet for the purpose of appointing seven directors, and such publications shall be made during thirty-five days before the day appointed for the election. The seven directors who shall have been elected at the aforesaid election by a majority of the votes given by the stockholders or their attorneys-in-fact, and which votes shall be received in a number equal to the shares subscribed for, shall be the first directors, and they shall remain in office until the first Monday of February next, and it shall be the duty of the said directors to elect a president for the said institution, who shall be chosen among them, and the elected president shall hold his office until the first Monday of February next.

SEC. 9. Be it further enacted, That the yearly election of
246 seven directors shall be held after the first election in the house of the Consolidated Association, in the city of New Orleans, on the fourth Monday of January of every year, and the said directors shall be elected by a majority of the votes given by the stockholders or their attorneys-in-fact, and which shall be received in a number equal to the shares subscribed for, and they shall act in virtue of said election from the first Monday of February next until the first Monday of the year ensuing; and the board of directors, annually, at the first meeting after their election in each and every year, shall elect one of the directors president of the said institution, and the elected president shall remain in office for the same period for which the directors are appointed and elected as aforesaid: Provided always, That in case it should at any time happen that an appointment or election of directors or an election of the president of said institution should not be so made as to take effect in any way when in pursuance of this act they ought to take effect, the said corporation shall not for that cause be deemed to be dissolved, but it shall be lawful at any other time to make such appointments and to hold such elections, as the case may be, and the manner of holding the elections shall be regulated by the by-laws and ordinances of the corporation, and until such appointments or elections be made the directors and president of the said Consolidated Association for the time being shall continue in office: And provided also, That in case of a vacancy arising from the death,

resignation, absence from the United States, non-acceptance,
247 refusal to qualify, or removal of a director from office the vacancy shall be supplied by the board of directors.

SEC. 10. Be it further enacted, That the directors for the time being shall have the power to appoint such officers, clerks, and servants under them as shall be necessary for executing the business of said corporation, and to allow them such compensation for their services, respectively, as shall be reasonable, and shall be capable of exercising such other powers and authorities for the well governing and ordering of the affairs of said corporation as shall be prescribed by the by-laws, regulations, and ordinances of the same.

SEC. 11. Be it further enacted, That the president, directors, cashier, and other officers, before they enter on the duties of their respective offices, shall take and subscribe the following oath or affirmation in the presence of any magistrate: I, A. B., do solemnly swear (or affirm, as the case may be) that I will faithfully and impartially, without favor or affection, discharge the duties incumbent on me as —— according to the best of my abilities and understanding, and the said oath or affirmation shall be filed in one of the offices of said institution, and no other oath shall be required.

SEC. 12. Be it further enacted, That the following rules, restrictions, limitations, and provisions shall form and be fundamental articles of the constitution of the said corporation, to wit:

1st. The number of votes to which the stockholders shall be
248 entitled in voting for directors shall be equal to the number of shares he, she, or they shall hold—that is to say, for each share one vote; and the stockholders who shall have subscribed for thirty shares, more or less, shall be entitled to thirty votes, more or less, but no stockholder shall be entitled to more than fifty votes. In all the elections of directors votes may be given either in person or by proxy.

2d. Two partners shall not be eligible at the same time as directors of the Consolidated Association, nor shall a director of any other bank, though a planter, or his partner be directors of the Consolidated Association of the Planters of Louisiana.

3rd. The elected directors who shall be in office at the time of a yearly election shall be eligible for the year ensuing, and in case the candidates should receive an equal number of votes it shall be determined by lot.

4th. No stockholder shall be director of the said Consolidated Association if he is not exclusively a planter and citizen of the United States and if he does not possess at least ten shares in the funds intended for the guarantee of the reimbursement of the capital of the loan with the interests that shall have been made by the said corporation. No director shall be entitled to any emoluments, but the director may make such compensation to the president for his extraordinary attendance at the said institution as to them may seem reasonable.

5th. No less than five directors, of whom the president to be one,

shall constitute a board for the transaction of business, &
249 no less than four directors, of whom the president to be one, shall constitute a board for the purpose of discounting: Provided, That in case of sickness or urgent absence of the president he shall be replaced by one of the directors, who shall be appointed for that purpose by the *direction*.

6th. The cashier, before entering on the discharge of his office, shall be required to give bond, with two or more sureties, to the satisfaction of the directors, in a sum not less than fifty thousand dollars, for the faithful performance of his duties to the corporation, and all the other officers and clerks who may be appointed by the directors shall give bond, with one or more sureties, to the satisfaction of the directors, in such sums as the said directors may determine, with a condition as required in the case of the cashier.

7th. The transfer of the stock of the said corporatian shall be assignable and transferable according to such rules as shall be prescribed by the laws, regulations, and ordinances of the same.

8th. The notes of the Consolidated Association, signed by the president and countersigned by the cashier, promising to pay a specified sum of money to a certain person or to his order or to the bearer shall be obligatory upon the Consolidated Association, though they should not have the seal thereof, and any of the said notes payable to order shall be negotiable, transferable by delivery.

9th. No dividend shall be made of the profits of the Consolidated Association. These profits shall be disposed of as shall be
250 specified hereafter. It shall be the duty of the directors to submit to the Legislature every year a correct and detailed statement of the affairs of the Consolidated Association and of the profits, if there be any, after deducting all the losses.

10th. In case a director should become insolvent after his election he shall be incapable of holding his office any longer and another director shall be elected in his place and stead, as provided in the ninth section of this act.

11th. The corporation shall not take more than eight per cent. per annum on notes discounted or money lent out, and no more than six per cent. per annum on any of its loans or discounts made on notes at order payable within the four month after the said loans or discounts shall have taken place.

12th. The sum of two millions of dollars, which is the capital of the corporation, shall be exclusively appropriated to loans on notes or obligations secured by mortgage, or immovable property to the satisfaction of the board: Provided, however, That no mortgages shall be accepted on land that should not be in a state of cultivation, and that the said Consolidated Association shall not lend a sum exceeding the half of the settled value of the immovable property to be so mortgaged, after deducting all former mortgages and charges.

13th. No director shall be entitled to a credit in his capacity of director, & none of said directors shall obtain a credit above what he may pretend to in his individual capacity.

14th. The last Monday in January, April, July, and Octo-
251 ber of each year shall be the days appointed to acquaint

with the affairs of the Consolidated Association those of the stockholders who shall be desirous to take cognizance of said affairs, and it shall be the duty of the directors to give a free inspection of the books of the institution to the said stockholders, as well as every information they shall request to receive.

SEC. 13. Be it further enacted, That the annual profits of the said institution, if there be any, after deducting all losses, shall remain deposited in the said institution, and the directors of the said Consolidated Association shall employ them in discounting notes until the expiration of its charter.

SEC. 14. Be it further enacted, That at the expiration of the charter of the Consolidated Association, and after all its debts shall have been paid and settled, the profits that the said Consolidated Association shall have made during the duration of its charter shall be divided between the stockholders of the Consolidated Association of the Planters of Louisiana in proportion to the amount of their shares.

SEC. 15. Be it further enacted, That the said corporation shall never refuse or suspend payment of any of its notes or obligations in lawful money of the United States or the delivery of any funds received in deposit; and if said institution should happen at any time to refuse or suspend the said payment the bearer of any notes or obligations or any person authorized to receive the amount of any funds deposited as above shall be entitled to recover in-
252 terests at the rate of twelve per cent. per annum from the moment of the suspension or refusal until final payment.

SEC. 16. Be it further enacted, That if the Consolidated Association has not begun its operations on the 1st day of January next it shall be lawful *to* the Legislature at any time prior to its going in operation to declare the present act null and void.

SEC. 17. Be it further enacted, That the deliberations of the directors of this said corporation shall have the same force and effect as if taken by the stockholders themselves, whom they represent. They shall be assisted by a council, to consist of a comptroller, to be appointed as is hereafter provided for, of the attorney, and the notary, who shall be appointed by the said directors, for the administration of said corporation. The members composing said council shall be consulted only. The directors shall pass regulations for the general administration of the Consolidated Association, which they shall alter or extend as they may think proper for the best administration of said institution. They shall pass, likewise, regulations for the conduct of the affairs of said Consolidated Association, which they shall likewise alter or extend as they shall think proper.

SEC. 18. Be it further enacted, That there shall be elected to said institution by the Governor, with the advice and consent of the senate, a comptroller, to hold his office during two years, whose duty shall be to submit to the board of directors the intended regulations or by-laws for the general administration and conduct of the affairs of said association; to defend them in presence of the directors, so that, from the result of the discussions between the said comptroller and the council of the directors, the different points on the regulations

or by-laws to be passed being perfectly explained the direct-
253 ors may pass more correct regulations or by-laws.

The comptroller shall also inspect all the several branches of the administration. He shall be authorized to propose amendments to said regulations or new ones whenever he shall think proper, and it shall be the duty of the directors to deliberate and to give their decisions upon them every time that the said comptroller shall present any.

It shall be the duty of the comptroller to present every year, at the opening of the Legislature, a detailed statement respecting the situation of the affairs of the said Consolidated Association, and to inform both houses of the improvements to be made that should not have been provided for by its charter and which the directors should have no power to make without being authorized by the Legislature.

The said comptroller, before entering in office, shall swear and subscribe, in presence of a magistrate of the State, the same oath specified in the eleventh section of the present act.

The said comptroller shall be entitled to no salary and be subject to the same restrictions expressed in the thirteenth regulation of the twelfth section of the present act.

SEC. 19. Be it further enacted, That it shall be the duty of the directors to keep one or more books in which all the deliberations and regulations shall be entered, and it shall be lawful *to* the Legislature, whenever they shall think proper, to appoint a committee to investigate the affairs of said institution, and more particu-
254 larly to ascertain the amount of the cash of the notes in circulation and of the balances to the said Consolidated Association, and the amount of the deposits, and to make a true report upon its present situation to the Legislature, and the Legislature shall be authorized to dismiss one or more directors and to appoint others in their places and stead for the balance of the year.

SEC. 20. And be it further enacted, That the capital stock of the said institution shall be free from paying any taxes created by the State or by any parish or political body under the authority of the State during the duration of its charter.

SEC. 21. Be it further enacted, That the board of the Consolidated Association shall not pay or deliver to any person or persons whatever the amount of any sum loaned on the proceeds of discount on mortgages before the said act of mortgage shall have been recorded.

SEC. 22. And be it further enacted, That on all mortgages executed under this act the president, directors, and Co. of the said institution shall have the right to seize the property mortgaged, in whatever hands it may be, in the same manner and with the same facilities that it could be seized in the hands of the mortgager, notwithstanding any sale or change of the title or possession thereof, by inheritance or otherwise.

SEC. 23. Be it further enacted, That in all hypothecated contracts or obligations entered into by any individual with or in favor of the said president, directors, and Co. of the Consolidated Associa-
255 tion of the Planters of Louisiana, according to the true intent and meaning of this act, it shall be lawful for the wife of

such individual to bind herself jointly and *in solido* with him, and in such case the property and rights of the said wife, either dotal or of any other description, shall be affected by said contracts or obligations, provided the said wife be of the age of majority at the time of entering into such contracts or obligations.

SEC. 24. Be it further enacted, That in case an individual who should have obtained from the said Consolidated Association a loan secured by mortgage on an immovable property shall apply for and obtain a respite from his creditors the rights of the Consolidated Association to compel payment by obtaining an order of seizure and sale of said mortgaged property shall not be thereby impaired or delayed.

SEC. 25. Be it further enacted, That if an individual who should have obtained from the said Consolidated Association a loan secured by mortgage as aforesaid shall make a voluntary surrender of his property to his creditors the said mortgaged property shall not be comprehended in the cession, except payment of the sum due to the said Consolidated Association be secured thereon; but it shall be lawful for the institution to proceed by an order of seizure and sale against the said property in the same manner as if no surrender had been made, and the surplus only of the proceeds of sale, after paying the debt due to the Consolidated Association and costs, shall be paid over to the syndics, assignees, or trustees of the estate of such debtor.

256 SEC. 26. Be it further enacted, That in case a stockholder should become insolvent he shall be incapable of holding his place of stockholder any longer, and his share or shares shall be sold by the directors, and the profit of these shares, if any, shall be paid over to the mass of the creditors of the debtor.

In case of death of a stockholder it shall be the duty of the heirs, within the three months following his death, to sell his share or shares, and, in case the same should not have been sold and conveyed in said lapse of time, the directors shall proceed themselves to sell the same, and the profits accruing thereon, if any, shall be paid over in the hands of the heirs of the deceased. It shall be the duty of the directors to make such regulations as they shall think proper to prevent any costs chargeable to the institution when they shall be obliged to make themselves such sales of shares.

SEC. 27. Be it further enacted, That in each of the parishes of the State the directors shall be elected among the stockholders of said parish, and in case there should be no stockholders the directors shall appoint the three managers above stated out of the class of agriculturalists, and their duty shall be to deliver to the planters who shall wish to borrow money upon mortgage certificates stating the value of the property of the borrower, which certificates shall be well detailed and pursuant to the blank that shall be delivered to them by the board of said institution. These certificates shall be signed and sworn to, besides, by at least two of the said managers,

257 in presence of the parish judge.

SEC. 28. And be it further enacted, That in case an immovable property should be sold for endorsed notes to the satisfaction of the vendor, the stockholder who should happen to endorse one

or more of these notes, his name should be stricken out from the roll of the Consolidated Association; however, a stockholder might become security in all kinds of sales or transactions, provided it be not by the endorsement of notes or obligations that might be conveyed by way of endorsement, which shall be payable at a certain time and domicil.

Approved March 16, 1827.

No. 19.

An act to amend the act entitled "An act to incorporate the subscribers to the Consolidated Association of the Planters of Louisiana."

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That the capital of two millions of dollars that the Consolidated Association of the Planters of Louisiana is authorized to borrow by the first section of the act of the sixteenth March, eighteen hundred and twenty-seven, shall be, and is hereby, increased to two millions five hundred thousand dollars.

258 SECTION 2. And be it further enacted, That the sum of two millions five hundred thousand dollars, divided into shares of five hundred dollars each, to be subscribed to guarantee the reimbursements of the loan, shall be, and is hereby, increased to three millions of dollars, subject, however, to the provisions of the said act of the sixteenth March, eighteen hundred and twenty-seven.

SECTION 3. And be it further enacted, That, in order to facilitate to the Consolidated Association the negotiation of the aforesaid loan of two millions five hundred thousand dollars authorized by the act of incorporation of the sixteenth March, eighteen hundred and twenty-seven, and by the present act, the faith of the State is hereby pledged for the reimbursement of the capital and interest of said sum of two millions five hundred thousand dollars.

SECTION 4. And be it further enacted, That bonds to the amount of two millions five hundred thousand dollars, on the terms prescribed by the aforesaid act of the sixteenth March, eighteen hundred and twenty-seven, shall be subscribed to the order of the president, directors, and company of the Consolidated Association of the State of Louisiana, shall be signed by the Governor and countersigned by the treasurer, and under the seal of the State.

SECTION 5. And be it further enacted, That said bonds may be transferred, by the endorsements of the president and of the cashier of said Consolidated Association, either to the order of any person whatever or to the bearer, and said endorsement shall men-

259 tion the place where the semi-annual interest on said obligation shall be paid.

SECTION 6. And be it further enacted, That the bonds, with privileged mortgage for the sum of three millions of dollars, subscribed by the stockholders of the said Consolidated Association in order to guarantee the loan of two million five hundred thousand dollars, shall be deposited in the offices of said institution for safe keeping

and as a guarantee for the reimbursement of the principal and interest of the bonds given by the State, and, moreover, all the hypothecary obligations of whatever nature subscribed by individuals in favor of said Consolidated Association shall serve as a special guarantee and security for the reimbursement of said capital of two million five hundred thousand dollars and the interest thereof, and shall for that purpose be deposited in the offices of said institution, inasmuch as the said Consolidated Association is bound for the reimbursement of said bonds subscribed by the State, at their respective instalments, and to pay the semi-annual interest until the whole amount of the principal is reimbursed.

SECTION 7. And be it further enacted, That the State shall be, and is hereby, acknowledged to be a stockholder to the amount of one million of dollars as a bonus, on condition, however, that the credit to be granted to the State in consideration thereof shall be two hundred and fifty thousand dollars, without defalcation and during the entire duration of the charter, and that the State shall pay
260 interest on the whole or a part of its credit, as the case may be, whenever it shall make use of the same; and, moreover, the dividends arising from the said one million of dollars stock shall be paid to the State treasurer in the same proportions and at the same time that dividends accruing to the other stockholders are to be paid.

SECTION 8. And be it further enacted, That the provisions of the act of the sixteenth March, eighteen hundred and twenty-seven, and those of any anterior laws which may be inconsistent with the provisions of the present act are hereby repealed, as well as the twenty-eighth section of the act of the sixteenth March, eighteen hundred and twenty-seven.

SECTION 9. And be it further enacted, That it shall be the duty of the persons appointed to negotiate the loan authorized by the charter of the Consolidated Association and by the present act to stipulate that all sums loaned by lenders in New Orleans shall be paid to the Governor of the State and to the president and directors of the said Consolidated Association of the Planters of Louisiana.

SECTION 10. And be it further enacted, That the Governor shall sign and remit to the said president and directors his obligations for all sums loaned in New Orleans only when said sums so loaned in New Orleans shall be remitted to him, said obligations to be delivered by said president and directors to lenders or their agents.

SECTION 11. And be it further enacted, That the securities offered by stockholders shall be submitted to the examination
261 of the secretary of state and the attorney general.

SECTION 12. And be it further enacted, That, whenever the secretary of state and attorney general shall give notice to the directors that the securities offered by a stockholder are not sufficient, it shall be the duty of the directors to require additional securities from such stockholder or to reduce the number of his shares to such amount for which the security offered by him shall have been thought a sufficient guarantee.

SECTION 13. And be it further enacted, That the sums of money

paid to the Governor and to the president and directors shall be by him placed at the disposal of said president and directors, to be by them employed in the manner prescribed by the charter and by the present act.

SECTION 14. And be it further enacted, That the charter of said Consolidated Association, instead of expiring on the thirtieth of June, eighteen hundred and forty-two, as enacted by the seventh section of the act of the sixteenth March, eighteen hundred and twenty-seven, shall remain in force until the thirtieth of June, eighteen hundred and forty-three.

SECTION 15. And be it further enacted, That the immovables on which the said Consolidated Association shall lend its funds shall be situated in the State of Louisiana and not elsewhere.

SECTION 16. And be it further enacted, That, for the management of the affairs of said association, there shall be twelve directors, stockholders, six of whom shall be appointed annually by the Governor and senate and six shall be annually elected at
262 the banking-house of said association by the qualified stockholders of the capital of said bank. The appointment on the part of the State shall be made on the second Monday of January in each year.

SECTION 17. And be it further enacted, That, as soon as the president, directors, and company of the Consolidated Association shall inform the Governor of the State that they accept of the present law, the same shall be obligatory on said institution and shall have the same force and effect as the original charter.

Approved February 19th, 1828.

No. 20.

An act supplementary to an act to amend the act entitled "An act to incorporate the subscribers to the Consolidated Association of the Planters of Louisiana.

Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That the Governor of this State shall appoint, on the first Monday in March next, or earlier, the six directors on the part of the State.

Approved February 28th, 1828.

An act relative to the Consolidated Association of the
263 Planters of Louisiana.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That five directors, with or without the president, will, if unanimous, be competent to discount, grant loans on mortgage, and require all deductions on loans already made or to be made, to exercise all power that may be exercised by the board of directors: Provided, however, That no rule shall be repealed, altered, or amended, and no officer shall be appointed or dismissed, or his salary diminished or augmented, except by the vote of the majority of all the directors:

Provided, however, also, That whenever a stockholder shall make application to be permitted to transfer his shares and to be discharged his demand shall not be granted until after the person to whom he wishes to transfer the same shall have furnished good and sufficient security, to the satisfaction of the board, in the manner provided by the charter, and in no case shall a stockholder be discharged and the mortgage existing against him be annulled or a loan on the surplus value of the property already mortgaged to the Consolidated Association be granted except after a resolution to that effect shall have passed by a vote of two-thirds, at least, of the whole number of directors, which vote shall be taken by yeas and nays, and it shall be lawful for any stockholder to require copies of all such resolutions, certified by the cashier.

SEC. 2. Be it further enacted, &c., That whenever the office
264 of a director elected by the stockholders shall become vacant it shall be the duty of the directors on the part of the stockholders to fill the vacancy in the shortest possible delay.

SEC. 3. Be it further enacted, &c., That such of the bonds as belonged to the first series and were to be made payable at five years, which have yet not been disposed of, may be annexed to the second series and made payable at the same time.

SEC. 4. Be it further enacted, &c., That the 26th and 28th sections of the act to incorporate the subscribers to the Consolidated Association of the Planters of Louisiana be repealed.

SEC. 5. Be it further enacted, &c., That the president and directors of the Consolidated Association be authorized to receive from the acting Governor the bonds still due the association, any law to the contrary notwithstanding.

SEC. 6. Be it further enacted, &c., That from and after the 30th day of June, 1843, the day on which the payment of the last obligations of the State shall take place, a delay of two years is hereby granted for the purpose of closing the affairs of the Consolidated Association, it being understood that no new bonds shall be made and no operations conducted except such as may be necessary to the settlement of the affairs of said institution.

SEC. 7. Be it further enacted, &c., That as soon as the stockholders shall accept or cause to be accepted this act, or any section or sections thereof, the same, or such of them as shall have been accepted, shall have the force & virtue of the primitive charter: Provided, however,
That the board of directors shall inform, in writing, the Gov-
265 ernor or, in his absence, the secretary of state, of such acceptance on the part of the stockholders.

SEC. 8. Be it further enacted, &c., that the sum of four thousand dollars shall be paid, one-half to the secretary of state and the other half to the attorney general, being a compensation for the service they have already rendered and may render hereafter to the Consolidated Association of the Planters of Louisiana.

SEC. 9. Be it further enacted, &c., that the board of directors of the Consolidated Association shall advance the sum granted to the said secretary of state and attorney general, and they are hereby authorized to reimburse themselves for the said sum, in principal and in-

terest, out of the moneys that shall accrue to the State at the expiration of the charter in its capacity of stockholder in the sum of one million of dollars.

SEC. 10. Be it further enacted, &c., that the sum of five hundred dollars be paid to H. Pedesclaux, upon his warrant, by the treasurer of the State, out of any money in the treasury not otherwise appropriated, in full compensation for his services in making, as first clerk in the office of the secretary of State, 2,500 impressions of the seal of the State on certain bonds of the State subscribed to the order of the president, directors, and company of said Consolidated Association.

Approved March 15, 1830.

266 An act amendatory of and supplementary to the several acts relative to the Consolidated Association of Planters of Louisiana.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That the securities given to guarantee shares in the capital stock of the Consolidated Association of the Planters of Louisiana on landed property situated in the city of New Orleans and its suburbs be and are hereby approved, and that shares in the said bank may be acquired and owned by the owners of immovable property situated in the city of New Orleans or in any other part of the State.

SECT. 2. Be it further enacted, &c., That the president and two directors chosen monthly by the board of directors shall form a committee of exchange to buy and sell bills and perform all business of that kind with the United States, Europe, and other parts: Provided, however, That their transactions shall be laid before the board in detail on every discount day, and shall be entered on the minutes of the board.

SECT. 3. Be it further enacted, &c., That the president of the Consolidated Association may be removed from office by a majority of the board of directors for neglect of any of his duties or refusal to perform them in whole or in part, and that he may be also removed by a like majority for incapacity, misconduct, and for any
267 other cause which might affect his reputation or credit.

SECT. 4. Be it further enacted, &c., That any director of the Consolidated Association who shall allow his signature to remain under protest, as drawer or endorser, during more than three days, shall be considered as having resigned, and the Governor, if the said director was named on the part of the State, or the board of directors, if he was elected by the stockholders, shall proceed to supply his place, except the said director furnish proof that it was necessary to allow the note or bill drawn, accepted, or endorsed by him to be protested in order to protect his own rights: Provided, however, That said director may be removed for any cause injurious to his character, reputation, or credit, in the manner prescribed by the section relative to the president.

SECT. 5. Be it further enacted, &c., That the board of directors, if

they think it advisable, may postpone to the thirtieth of June, one thousand eight hundred and forty-eight, or to any nearer period, the payment, in whole or in part, of the bonds of the State payable on the thirtieth June, one thousand eight hundred and thirty-eight, and on the thirtieth of June, one thousand eight hundred and forty-three, and that the Governor be, and is hereby, authorized, to this effect, to sign and issue new bonds, countersigned by the treasurer, drawn up in the same terms and as binding as the old ones, which new bonds shall be delivered by the Governor as fast as he shall receive the old ones.

SECT. 6. Be it further enacted, &c., That from and after the
268 thirtieth of June, one thousand eight hundred and forty-eight, the day on which the payment of the bonds of the State shall take place, a delay of two years shall be granted to said Consolidated Association to liquidate and close its affairs: Provided, however, That during that time it shall make no new loan or transact any business, except such as is necessary for the liquidation of the affairs of said institution.

SECT. 7. And be it further enacted, &c., That as soon as the stockholders shall have accepted this act or one or several of its sections the said amendments or such of them as shall be accepted shall have the same force as its primitive charter: Provided, however, That the board of directors give written notice to the Governor or, in case of his absence, to the secretary of state of said acceptance of the stockholders.

Approved March 21, 1835.

An act supplementary to an act entitled "An act amendatory of and supplementary to the several acts relative to the Consolidated Association of the Planters of Louisiana."

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened,
269 That one million and no more of the capital stock of the Consolidated Association of the Planters' Bank of Louisiana may be secured by mortgage on immovable property situated in the city of New Orleans and its suburbs and in the city of La Fayette and Carrollton, and that two directors on the part of the State and two directors on the part of the stockholders may be appointed or elected from among stockholders holding stock secured by property so situated, provided they be citizens of this State, and provided they and each of them shall have been *bona fide* holders of ten shares in said institution, secured as aforesaid, for three months at least previous to their nomination or election. The other directors shall be appointed or elected from among the stockholders, whose stock shall be secured by mortgage on rural immovable property and slaves, and who, at the time of their appointment or election, shall be citizens of this State, and who shall have been *bona fide* holders of ten shares so secured for three months at least preceding their appointment or election.

SEC. 2. Be it further enacted, etc., That, in case the board of di-

rectors shall retard the payment of the bonds of the State, as said board is authorized to do, the Governor shall deliver the bonds of the State as fast as the board shall give him notice of the negotiation of said bonds.

SEC. 3. Be it further enacted, &c., That, in the case of a sale under seizure, or in consequence of a contract with the Consolidated Association, of property mortgaged to said institution as security of stock or of loans on stock, the board of directors may cause to be
270 sold at auction, after thirty days' notice, the shares which rest on said property, and the board shall always have the right to fix the time within which the purchasers of said shares shall be bound to furnish the necessary mortgage, and shall also have the right to cause to be resold as before, after the same notices, should said shares not be guaranteed within the time prescribed, and the said institution shall have a special privilege on the advance which said shares may bring when sold for the reimbursement of the capital, interest, and cost thereof.

SEC. 4. Be it further enacted, &c., That it shall not be necessary in case of judicial process to annex to the petition the bonds of mortgage of the debtors in favor of the bank, but it shall suffice to annex copies certified by the notaries before whom said bonds shall have been signed.

SEC. 5. And be it further enacted, &c., That as soon as the board of directors shall inform the Governor that they accept this act it shall become obligatory to the president, directors, and company of the Consolidated Association of the Planters of Louisiana, and shall have the same force and effect as the original charter.

Approved March 7, 1836.

No. 22.

271 An act to revive the charters of the several banks located in the city of New Orleans, and for other purposes.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That the charters of all the incorporated banks in the city of New Orleans be, and the same are hereby, severally and respectively revived, and all the powers, rights, privileges, immunities, limitations, prohibitions, and restrictions contained in said charters are hereby renewed, extended, and made applicable in full force to each of said banks, respectively, subject to the limitations and provisions hereinafter contained, provided said banks shall, each for itself, and immediately after the passage of this act, prepare for a general resumption of specie payments by strictly observing and adhering to the following rules, which are hereby declared to be fundamental:

1. Each bank shall separate its loans on capital paid in from its loans on deposits; the loans on capital to be composed of accommodations on personal security or on mortgage, loans on stock by the property banks, and of all other investments, of whatever nature, not realizable in ninety days.

The loans on deposits and specie, representing the paper money

issued by the banks, shall be restricted to paper payable in full at maturity, and such paper shall form a component part of the specie basis intended to meet the circulation and deposits, and shall be restricted to ninety days, so as to effectually insure a rapid movement in the daily receipts.

272 The loans and investments on the capital shall be denominated the "dead weight."

The loans on deposit shall be denominated the "movement of the banks."

2. No bank shall increase the investment in its "dead weight" so long as the whole of its cash liabilities shall not be represented by one-third of the amount of such responsibilities in specie and at least two-thirds in satisfactory paper, payable in full at maturity and within ninety days, and each and every director shall be personally responsible for all loans and investments made in contravention of this rule, unless he shall show that he has voted against the same if present: Provided, That nothing herein contained shall be so construed as to relieve any bank from its obligation to lend the amount in the country required by its charter: Provided further, That no bank shall be authorized to increase the amount of its present loans, in the city of New Orleans, until such bank shall have made the loans required by its charter in the different country parishes.

3. That the account of the maker or endorser of any note or acceptor of any bill of exchange offered and discounted as paper strictly payable at maturity who shall apply for a renewal of said paper or for an extension of time shall be closed in the bank where such transaction shall have originated, and notice thereof shall be immediately given by such bank to the other banks.

273 4. That every party to commercial paper who shall suffer such paper to be protested and, if a drawer of a bill of exchange or indorser of a promissory note or bill, shall suffer it to remain unpaid during ten days without any legal cause shall be considered *de facto* discredited, and the fact shall be notified to the board of currency and the other banks, and no discount shall be afterwards allowed him as drawer or acceptor until he has paid up the full amount.

5. That all paper offered for discount and having no more than ninety days to run shall be considered *de facto* as payable in full at maturity.

6. That any director leaving the State shall be considered as having *de facto* resigned, unless it be for a term not exceeding thirty days, and any director domiciled in the first judicial district failing to attend, without permission, five regular meetings of the board in succession shall be considered, except in case of sickness, as having vacated his place, and the places thus vacated shall be immediately filled by the authority who originally appointed the director, or by the Governor if the director be appointed by the Legislature and it be then in recess, and the same rule shall apply to all cases of vacancy: Provided, That no person shall be elected or shall serve as a director of any bank in the State of Louisiana who shall not at the time of

election or appointment be a citizen of the United States and of this State.

SEC. 2. Be it further enacted, &c., That it shall be the duty of
274 the Governor of the State, with the advice and consent of the senate, immediately after the promulgation of this act and every year thereafter, in the last week of January, to appoint three persons with the following qualifications:

1st. To be a citizen of the United States and of the State of Louisiana, and to have resided four consecutive years therein.

2d. Not to be a director or commercial partner of any bank director or officer of the bank.

3d. Not to be a money broker.

And said persons shall organize themselves into a board, to be styled the "board of currency," the first board to serve until the first Monday in February, 1843, and until replaced by new appointments, and said board shall appoint one among themselves to act as president. Said members shall be entitled each to a salary of four thousand dollars per annum in full for his services and office expenses, the whole to be paid quarterly by the banks working under this act, and each *pro rata* of its capital paid in. The duty of the board of currency shall be to take care that the paper money issued under the authority of the State be not depreciated, and for this purpose the following powers are hereby vested in them, to wit:

1. To supervise the faithful execution of this act and of the charters and by-laws of all banks working under it.

2. Thoroughly to examine the affairs of any bank whenever they may deem it expedient to do so, and at least quarterly.

275 3. To require of the president and cashier of each bank on Saturday of each week the following statement in a printed form signed by them:

1. Capital realized, $——.

2. Amount of "dead weight," under the respective heads of real estate, loans on stock, long loans, personal or otherwise, protested paper, and, in fine, of all assets not realizable within ninety days.

3. Movement of the bank, to wit:

Loans on paper, payable at maturity, and intended to meet the two-thirds of cash liabilities unrepresented by specie.

Circulation.

Deposits and other cash liabilities.

Specie and cash assets.

4. Said statements shall be regularly filed in the office of the board of currency, and the statements so furnished on the last Saturday of each month shall be signed by the president of the board of currency and published in the State paper on the first Monday in each month.

5. The board of currency, whenever they may think it expedient, shall have a right to call a meeting of the proprietors of any one of the said banks to take cognizance of its affairs, and to call annually, and at least thirty days before the election of directors for the ensuing year, a meeting of the proprietors or stockholders of each

bank, and to lay before them full reports of its operations during the year and of its real situation.

276 And said board of currency shall lay before the Legislature in the first week of their annual session, or as soon as practicable thereafter, a full copy of all proceedings at such meetings of the stockholders and of all their own doings during the year; and it shall be the duty of the president and cashier of each and every bank to furnish the board of currency copies of any protest that may be entered into by any director of said bank so soon as the same shall be entered into its minutes; and it shall be the duty of every member of the board of currency, previous to entering upon the duties of his office, to take and subscribe the following oath before the parish judge in and for the parish of New Orleans, to wit:

"I, —— ——, swear that I will, to the best of my ability, comply with the provisions of the act entitled 'An act to revive the charters of the several banks located in the city of New Orleans, and for other purposes,' approved on the —, and devote myself strictly to the duties of my office," and said oath shall be deposited in the archives of the secretary of state; and each member of the board of currency, previous to entering upon the duties of his office, shall give bond to the satisfaction of the State treasurer, each for a sum of $5,000, guaranteed by mortgage on real property or personal security, to the satisfaction of said State treasurer, and said bonds, in the name of the State, shall remain deposited in the office of the secretary of state; and it shall be the duty of the attorney general, upon satisfactory proof being furnished him by any citizen

277 of the State, on his affidavit, of the non-fulfillment by any member of the board of currency of the duties imposed upon him by this act, to sue said member, upon his bond, in the name of the State, before any court of competent jurisdiction, and for such damages as may have accrued from his neglect of duty; and such suits shall be tried summarily and in preference to any other; and in case judgment should be given against said member of the board of currency his place shall be considered as vacated, and it shall be the duty of the Governor immediately to replace said member.

SEC. 3. Be it further enacted, &c., That with a view of enabling the banks effectually to secure their debts and to carry into execution the first fundamental rules contained in the first section of this act it shall be lawful for their respective boards of directors to consider the whole of the debts due them on the passage of this act as forming part of their "dead weight," and it is hereby made the duty of the respective boards of directors to renew such debts now due or that may mature hereafter, on the application being made to that effect by the respective parties, on the following conditions:

1. The payment of ten per cent., exclusive of interest, on the maturity of the debts and the balance at twelve months, renewable until fully paid on the payment of fifteen per cent. each year on the original amount, provided ample and satisfactory security on real estate be furnished by the applicant.

2. The payment of ten per cent., exclusive of interest, on the maturity of the debts and the balance by equal instalments of

278 six, twelve, eighteen, and twenty-four months, provided the applicant furnish good and sufficient personal security: Provided, That for the debts due to the branches or by persons residing in the country on personal security twelve months shall be granted to the debtors on the payment of ten per cent. cash, exclusive of interest, and such debtors to retain the right to renew the same from year to year on the payment of fifteen per cent. on the original amount until fully paid: And provided also, That the parties applying for the renewals contemplated in this section shall not be entitled to any credit as drawers or obtaining any loan guaranteeing the same until they shall have completely paid the amount so loaned them, and it shall be lawful on all the above loans for the banks to charge eight per cent. discount: Provided, That from the first payment to be made to the banks, as required in this section, shall be deducted all payments made to said banks by such of said debtors as may hereafter apply for renewal from and after the 24th December, 1841, on loans made prior to that date.

SEC. 4. Be it enacted, &c., That hereafter no property shall be sold upon any process issued upon a judgment on mortgage in favor of any banking institution in this State without the benefit of an appraisement and upon the conditions regulating ordinary sales: Provided, That this shall not apply to property banks for loans upon stock, nor in any case, except upon new loans, according to the provisions of this act.

SEC. 5. Be it enacted, &c., That for the sole purpose of
279 enabling the banks to carry into full effect the second section of this act the banks are hereby authorized to issue notes, payable on the 30th of September, 1842, or to stamp their present notes, including their respective notes now in circulation, payable at that epoch, to an amount equal to double the stock of specie they may respectively have on hand: Provided, That for the amount of notes issued and thus to be issued and unrepresented by specie there shall be furnished by the respective banks, as hereafter directed, an equal amount of Louisiana State bonds or of notes bearing mortgage on real property and exceeding by twenty per cent. the amount of bank notes to be issued as above, and all notes thus issued or stamped payable 30th September, 1842, shall be subject to the formalities hereinafter provided for.

SEC. 6. Be it further enacted, &c., That all bank notes to be issued or stamped payable 30th September, 1842, as provided for by the 5th section of this act shall also be stamped by the board of currency; that a complete record of all notes so stamped shall be kept by said board; that all securities offered by the banks other than the State bonds shall be first submitted to the approbation of the State treasurer and board of currency, a majority of whom shall have the right to reject the same if not found sufficient.

The whole of such securities shall be lodged for safe keeping in one of the property banks, subject to the joint order of said board of currency and treasurer, and shall there remain as a guarantee
280 for the faithful payment of all cash responsibilities of the respective banks until the resumption of specie payments, as hereafter provided; that all bank notes stamped in pursu-

ance of this section shall be received at par by all banks working under this act in payment of debts due them.

SEC. 7. Be it further enacted, &c., That any bank, voluntarily or otherwise, entering into liquidation under this act, on its passage or any time thereafter, shall be relieved from the payment of any bonus to the State or corporations not yet due or from the further performance of any public work and improvement not yet completed imposed by its charter: Provided, That this privilege shall not apply to any bank in which the State is a stockholder or for the debts or obligations of which the State is liable: Provided, That this clause shall not be considered as releasing any bank which may have constructed any public work or improvement from the obligation of surrendering up the same at the time and on the conditions fixed by its charter to the State or to any corporation as provided by its charter.

In case such bank shall, in conformity with its charter, have constructed and completed any public works or improvements such bank may retain its corporate powers and all other privileges conferred by its charter, so far only as the continuance of such powers and privileges may be necessary to enable it to retain the property in such works and improvements, and to manage and carry on the same until the termination of the period fixed by its charter: Provided, That, as regards the Gas-Light and Banking Company, the time shall not extend beyond forty years from the date of its
281 charter: And provided further, That said Gas-Light and Banking Company shall, within six months after the passage of this act, consent to transfer to the different municipalities, or any corporate body or bodies representing the city of New Orleans, the right given by the 42d section of the charter of said bank of purchasing the gas works: Provided, That nothing in this section shall be construed to release the Atchafalaya Railroad and Banking Company from the obligation of making the railroad imposed by its charter, except so far as the State is concerned, on condition that said bank shall grant to all debtors applying for the same, as their respective debts shall fall due or shall have fallen due heretofore, the same terms, the same conditions, and the same restrictions, and the security to be determined in the same manner as laid down in the third section of this act, and shall be entitled to charge the same interest and submit to all the provisions therein contained.

SEC. 8. Be it further enacted, &c., That, as a further consideration for the extension of time required to be given to their respective debtors, by the preceding section, by the banks that may now or hereafter enter into liquidation, voluntarily or otherwise, it shall be the duty of the board of currency, whenever a bank shall, by written notification to the Governor of the State, place itself in liquidation, or be compelled to do so under this act, to require of the board of directors of said bank, and under the oath of its president and cashier, a statement of its cash assets and liabilities; and it
282 shall be the duty of the banks not in liquidation under the provisions of this act, and as a condition for the restoration of their charters, to receive at par at their respective counters, in

payment of all debts and obligations due and owing them, respectively, the circulation of the bank or banks that may enter into liquidation, voluntarily or otherwise, under the provisions of this act; and the said circulation, when so received, shall be distributed among the several banks not in liquidation, according to the circulation of each bank, which circulation for the purpose of this distribution shall be deemed to be as follows, to wit:

The Union Bank of Louisiana, eight hundred thousand dollars.

The Citizens' Bank of Louisiana, seven hundred thousand dollars.

Louisiana Bank, seven hundred thousand dollars.

Louisiana State Bank, five hundred thousand dollars.

The Consolidated Association, five hundred thousand dollars.

The New Orleans Canal and Banking Company, five hundred thousand dollars.

The Commercial Bank of New Orleans, five hundred thousand dollars.

The City Bank of New Orleans, five hundred thousand dollars.

The Mechanics' and Traders' Bank, four hundred thousand dollars.

The Carrollton Bank, two hundred and fifty thousand dollars.

The Exchange and Banking Company, two hundred and fifty thousand dollars.

283 The Improvement Bank, two hundred and fifty thousand dollars.

The Atchafalaya Bank, one hundred and fifty thousand dollars.

The Bank of New Orleans, one hundred and fifty thousand dollars.

And the cash assets of said liquidating bank or banks shall be distributed in the same ratio among the banks thus receiving said circulation, and the whole amount thus advanced to the said liquidating bank or banks in receiving said circulation shall be guaranteed by such portion of its State bonds or portfolio as may be secured by mortgage or personal security or by mortgage on the real estate of said liquidating bank or banks, said securities to be approved by the respective banks receiving the circulation and the board of currency, and in case of difference of opinion the opinion of the board of currency shall prevail; and it shall be lawful for the banks so receiving the circulation of a bank in liquidation to charge interest at the rate of eight per cent., payable in advance, on their respective loans, and to lodge the securities thus received in guarantee of the issue as provided for by this act.

And it is hereby made the special duty of the board of currency to direct the whole of the operations contemplated in this section and so adjust the apportionment required, and to provide for the mode of cancelling the circulation so received when it shall be proper to do so. It shall be the duty of every bank revived and so continuing to be to abide the decision of the board of currency.

And the notes and securities, furnished as above by the
284 bank in liquidation, shall be guaranteed by such bank until the final payment of the advances made to it; and whenever a note of a bank in liquidation shall be paid the bank receiving it

shall forthwith cancel the same, but shall preserve it as a voucher; and if any note, after having been once paid, shall be again put in circulation, each and every person concerned in such act shall be imprisoned for a term not exceeding two years and pay a fine equal to the amount thus reissued, recoverable for the use of the Charity Hospital of New Orleans before any court of competent jurisdiction.

SEC. 9. Be it further enacted, &c., That it shall be the duty of each and every bank to accept this act within twenty-five days after its promulgation, & within three days thereafter to give written notice of said acceptance to the Governor of the State; and if any bank neglect or refuse to make such acceptance or to notify the Governor thereof within the above delays, it shall be considered as having forfeited its charter, and it shall be the duty of the attorney general immediately to sue said bank for the forfeiture of its charter for any acts or omissions or violations of its charter prior to the institution of said suit.

And should the attorney general neglect so to do for ten days after the expiration of the above time provided, it shall be the duty of the Governor to consider his place as having been vacated *de facto*, and to appoint another attorney general in his place, who shall also be considered as having vacated his place if not acting within
285 five days after his appointment, and the Governor to continue so to act until the full intent of this section shall have been carried into full effect.

SEC. 10. Be it further enacted, &c., That it shall be the duty of the board of currency, so often as they shall ascertain that any one of said revived banks shall fail or refuse to comply with the conditions of this act, to notify *to* said bank to enter at once into liquidation on the conditions provided for in this act, and on such bank refusing or neglecting to do so within twenty days after such notification it shall be the duty of the board of currency, under the penalty of $1,000 each member, to apprise the attorney general of this neglect or refusal; and it shall be the duty of the attorney general immediately to sue said bank for a forfeiture of its charter; and should the attorney neglect to do so for ten days after said notification to him in writing by the board of currency it shall be the duty of the Governor to consider his place as having been vacated and to act as provided in the ninth section of this act.

SEC. 11. Be it further enacted, &c., That it shall be the duty of each member of the board of currency to report to said board any infraction of this act that may come to his knowledge, and every director of a bank who shall be guilty of any such infraction shall be held responsible in damages and shall be liable besides to a fine of $500 for each offence, to be sued for by the attorney general on the notification of such infraction or infractions by the board of currency.

SEC. 12. Be it further enacted, &c., That thirty days after
286 the promulgation of this act it shall not be lawful for any bank to pay at their respective counters any other than their own notes, and it shall be their duty on each Saturday in every week to pay, or to require to be paid, as the case may be, their re-

spective balances in specie, and to exchange between themselves each day on opening their doors their respective notes, under the penalty of being put immediately into liquidation.

SEC. 13. Be it further enacted, &c., That from and after the 30th September, 1842, at which time all the banks shall be compelled to pay their notes and other liabilities in specie, the protest made by notary public, after due demand and refusal of payment of its notes or other liabilities in specie by a bank, unless declared and proved to be a forgery, shall constitute the forfeiture of the charter of such bank, and it shall be the duty of the board of currency and of the attorney general to proceed forthwith against such bank as provided for by this act.

SEC. 14. Be it further enacted, &c., That every director or officer, agent or clerk, of banking institutions who shall make false statements or false entries in the books of such institutions, or who shall exhibit false papers with intent to deceive the board of currency or the public as to the condition of such institution, as also any person or persons who shall knowingly and with a view to defraud any bank, draw or pay any check or checks, or be accessory to the drawing or paying of checks without funds in the institution drawn upon, shall be deemed guilty of felony and shall be subject to imprison-
287 ment in the penitentiary of this State for a term not less than one and no more than five years, and any person or persons making such statements under oath shall be deemed guilty of perjury, and punished according to law.

SEC. 15. Be it further enacted, &c., That all fines and penalties under this act shall be sued for as before provided, and all sums recovered shall be paid over by the attorney general, less ten per cent. for his own services, to the president of the Charity Hospital of New Orleans for the use of said hospital.

SEC. 16. Be it further enacted, &c., That it shall be the duty of the board of currency, whenever a bank shall be in liquidation, immediately to call a meeting of its stockholders, and the commissioners appointed to liquidate said bank shall remain under the supervision of the board of currency until the whole of the liabilities of said bank shall have been paid, and no longer; and the president of the board of currency shall have a casting vote in all deliberations of said commissioners; and if in any case the attorney general, on presenting a petition for the forfeiture of its charter against any bank, shall deem it necessary to apply to the courts for any conservatory process, it shall be the duty of the courts to grant an injunction restraining the action of such bank, or to order a sequestration of its effects, or to grant such other process as the circumstances of the case and the interests of the State and community may require; and all proceedings in court under this act shall be by summary process, and shall be disposed of with the least
288 possible delay and in preference to all other cases, both in the court of first instance and on the appeal.

SEC. 17. Be it further enacted, &c., That it shall be the duty of the banks in which the country is entitled to a proportion of the loans of said banks so to apportion their loans as — maintain as much as practi-

cable the respective rights of the country and of the city of New Orleans: And, provided, That hereafter no bank shall have the power of withdrawing any of its branches in the country without the consent of the Legislature of the State, and it shall be the duty of the board of currency to see that this section is carried into effect according to its true meaning, and to embrace such apportionments in their annual report to the Legislature; and the members of said board of currency shall also be liable to criminal prosecution by indictment for any willful violation of any of the fundamental rules or provisions contained in this bill, and shall, on conviction, be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding five years, at hard labor or otherwise, at the discretion of the court, and the place of the member of the board so prosecuted shall be deemed vacant on the finding of an indictment, and shall be filled according to law.

SEC. 18. Be it further enacted, &c., That the provisions of the third and seventh sections of this act relating to the extension of time to be granted to the debtors of the banks shall not apply
289 to the bonds and notes of the stockholders of property banks given for loans on stock.

SEC. 19. Be it further enacted, &c., That, in order to aid in the arrangements contemplated by this act, the Governor of the State is hereby authorized to issue bonds, payable in fifteen years, and bearing five per cent. interest, payable semi-annually, for the full amount now due to the respective banks by this State, which bonds shall be guaranteed by a sinking fund, to be hereafter provided for by the Legislature, and it shall be the duty of the State treasurer to effect such settlements as required by the respective parties.

SEC. 20. Be it further enacted, &c., That after the passage of this act no bank shall issue any note of a less denomination than five dollars, and the director of any bank voting for an issue of notes of a smaller denomination, contrary to the intent of this section, shall be liable to prosecution, and, on indictment and conviction, shall be punished by fine or imprisonment, or both, at the discretion of the court, and it shall be the duty of all directors and members of the board of currency to give the necessary information to the attorney general, and that no dividend shall be made by the banks during the suspension of payments in specie, and so long as the movements provided by this act of the banks shall not have been restored, under penalty for each director voting for the same to be as above provided.

SEC. 21. Be it further enacted, &c., That the Merchants' Bank and Gas Light and Banking Company are hereby prohibited from issuing any circulation whatever until after the resumption
290 of specie payments.

SEC. 22. Be it further enacted, &c., That from and after the 30th of September next the stock of no bank shall ever be held by a less number of individuals than fifty, each of whom shall own at least thirty shares of said stock, and that no person shall be permitted to vote at any election of stockholders unless he shall previously make oath that he or the person he represents is a *bona fide*

stockholder of said bank to the amount of the shares upon which he votes: Provided, That the person voting as agent of an absent stockholder may swear to the best of his knowledge and belief; and no cashier or officer of any bank shall ever permit any transfer of stock to be made on the books of such bank in such manner as to diminish the stockholders to a number less than is required in this section; and any officer of a bank who shall knowingly permit or authorize a transfer of stock in violation of this section shall be liable to a fine not to exceed one hundred dollars for each and every share so transferred and to imprisonment during ten days.

SEC. 23. Be it further enacted, &c., That the Legislature, or either house, shall have the right to examine into the affairs and situation of all the banks in this State, either by committees or by commissioners appointed for that purpose, or in such other manner as they may deem fit and proper; that any officer of any bank who shall refuse to permit such examination or wilfully throw any obstruction or difficulty in the way thereof shall be fined in a sum not
291 exceeding one thousand dollars and imprisoned for a term not exceeding twelve months: Provided, That this section shall not be so construed as to interfere with the rights of either branch of the General Assembly to punish such an offence as a contempt, if it be such.

SEC. 24. Be it further enacted, &c., That hereafter no bank shall purchase any shares of its capital stock; all such transactions shall be null, and each and every director who shall vote in favor of, or shall be in any manner concerned therein, shall be subject to a fine of twenty per cent. on the amount of such transaction.

SEC. 25. Be it further enacted, &c., That no bank, except the property banks, shall hereafter loan on a pledge of shares of its own stock more than thirty per cent. on the amount paid on said shares, so long as the stock of said bank is below its par value, under penalty of a fine of twenty per cent. on the amount of such loan on each and every director who shall vote in favor of such loan or on the cashier who shall permit the same, if done without the vote of the board of directors.

SEC. 26. Be it further enacted, &c., That all the banks of this State are prohibited from buying, selling, bartering, or trading for cotton, sugar, or any other produce, and from buying the stock of any incorporated company, and for any infraction of this section the banks so offending shall forfeit and pay a sum not exceeding five thousand dollars, and every director assenting to the same shall be fined in a sum not exceeding one thousand dollars, and shall be responsible for all damages.

292 SEC. 27. Be it further enacted, &c., That this act shall be in full force so soon as it shall have been published in the State paper in the city of New Orleans.

Approved February 5, 1842.

No. 93.

An act to amend an act entitled "An act to revive the charters of the several banks located in the city of New Orleans, and for other purposes," approved February 5, 1842.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That the sixth paragraph of the first section of the act entitled "An act to revive the charters of the several banks located in the city of New Orleans, and for other purposes," be, and the same is hereby, repealed, and that the following be substituted in lieu thereof, to wit: That no person shall hereafter be elected or appointed a director of any bank in this State who shall not, at the time of his election or appointment, be a citizen of the United States and of this State; and if any director of a bank shall absent himself from this State for a period exceeding four months his seat shall be considered as vacated, and shall be immediately filled by the authority by which such director had been originally appointed, or (if such director had been appointed by the Legislature, and it be then in recess)
293 by the Governor; and the same rule shall apply to all vacancies, occurring from any cause whatever, in the board of directors of any bank.

SEC. 2. Be it further enacted, &c., That so much of the fifth paragraph of the second section of said act as makes it the duty of the attorney general, under the circumstances therein mentioned, to institute suits against the members of the board of currency be, and the same are hereby, repealed, saving and reserving to the State or to persons injured by any unlawful act of said board or any of the members thereof the right to sue on the bonds furnished by them as in the case of any other official bond.

SEC. 3. Be it further enacted, &c., That the fifth and sixth sections of said act be, and the same are hereby, repealed, and that each and every bank accepting the said act may issue notes payable on the first Monday in December, 1842, or stamp their present notes payable at that period: Provided, however, That the whole amount of the notes issued or stamped, payable at said date, by any one bank shall never exceed three times the amount of specie in its vault belonging to said bank; and if any bank should issue or stamp a larger proportion of notes payable as above than is allowed by this act each and every person or officer of the bank concerned in such stamping or issuing shall be subject to imprisonment for a period which shall not exceed two years nor be less than two months.

SEC. 4. Be it further enacted, &c., That the eighth section
294 of said act be so amended that no bank shall be bound to receive in payment the notes of any bank or banks in liquidation to an amount which shall exceed in the aggregate thirty-three and one-third per cent. of the circulation of the bank thus receiving it as fixed by the scale established by said act, in which amount shall be included the notes of the liquidating bank held by and all balances due to the said bank receiving such notes, and said act shall not be so interpreted as to require any bank to receive a larger

amount of the circulation of a liquidating bank than that for which available security shall be given, the sufficiency of which security in case of difference of opinion shall be determined by the board of currency, and the whole of such assets and securities as shall be handed over to the banks receiving the circulation as aforesaid shall be held and may be used by them until the final liquidation of said bank or banks. If any bank going into liquidation under this act or the act to which it is an amendment should not on the final settlement have sufficient assets to pay and discharge all its liabilities, then and in such case the bank or banks taking up its circulation, according to the provisions of this section, shall suffer a loss *pro rata* with all the other creditors on the amount due it at the time a petition for a surrender of its charter by a bank shall be filed or a decree of forfeiture thereof shall be rendered.

SEC. 5. Be it further enacted, &c., That the twelfth section of said act be so amended that until the first Monday in November next it shall not be necessary for the banks that shall ac-
295 cept the same to settle their weekly balances in specie, but in such case the creditor bank shall have the choice of any notes or securities in the possession of the debtor bank, which notes or securities shall be taken at a discount of interest not exceeding six per cent. per annum on notes not having more than four months to run, and eight per cent. per annum on notes having more than four months to run, and the bank transferring the same shall be liable for any loss or deficiency thereon: Provided, however, That the board of currency are authorized, by and with the advice and consent of the creditor banks, to modify or suspend, at their discretion, these settlements in regard to any particular bank or banks when they are fully satisfied of the entire solvency of such bank or banks and when circumstances may render it advisable; and that said section be further amended so that the Merchants' Bank and Gas-Light and Banking Company shall be permitted until the 30th of September next to pay out the notes of other banks which may have accepted the act to which this is an amendment so far as may be necessary to discharge the debts now owing or liabilities incurred by said Merchants' Bank and Gas-Light and Banking Company.

SEC. 6. Be it further enacted, &c., That all that portion of the 17th section of said act which subjects the members of the board of currency to criminal prosecution and those portions of the 9th and 10th sections of said act which provide that on certain contingencies therein mentioned the office of the attorney general of the
296 State shall be considered as vacated and direct the Governor to appoint another in his stead be, and the same are hereby, repealed.

SEC. 7. Be it further enacted, &c., That the 19th section of the said act be so amended that the bonds required by said section to be issued by the State shall bear interest at the rate of six per cent. interest per annum, payable semi-annually, instead of five per cent., as provided by said act, and that said bonds shall be made payable at periods corresponding with those at which any bonds of the State heretofore issued in favor or for account of the banks to which they

are furnished shall mature, and in the proportion which such series of bonds may bear to the whole amount of bonds issued by the State or on account of said bank.

SEC. 8. Be it further enacted, &c., That the 24th section of said act be so amended that any bank in liquidation shall be allowed to take its stock in payment of debts due to it on a written authorization to that effect of the board of currency.

SEC. 9. Be it further enacted, &c., That the 25th section of said act shall not be construed to apply to renewals of loans on stocks made prior to the passage of said act.

SEC. 10. Be it further enacted, &c., That any bank accepting the said act, and which has issued bonds for the whole or a part of its capital, shall be, and is hereby, authorized to agree with the holders of such bonds to postpone the time of payment of any series that may fall due prior to the year 1845 by dividing such payment so as to make the same payable in four annual instalments of one-
297 fourth each year during the four years next ensuing that in which said series shall fall due.

SEC. 11. Be it further enacted, &c., That any bank which shall accept the act to which this is an amendment shall be permitted, by a vote of the stockholders, in all elections held after the passage of this act, to reduce the number of its directors to any number not less than eight: Provided, however, That those banks in which the State or the city of New Orleans have the right to appoint a portion of the directors shall make this reduction in such manner as to preserve to the State and city the same relative proportion of directors to which they are entitled by the charters of the said banks.

SEC. 12. Be it further enacted, &c., That the Governor be, and he is hereby, authorized to grant leave of absence, for a term not exceeding four months, to members of the board of currency, and to appoint other persons to fill the places of such members during their absence: Provided, however, That leave of absence shall not be granted to more than one member of the board at a time; and if any member absent himself with or without leave his salary shall cease to run during his absence, and that in all cases the person appointed in lieu of an absent member shall be entitled to the salary of such member for the period during which such member shall be absent, and be bound to give the same security.

SEC. 13. Be it further enacted, &c., That the board of directors of such of the banks located in the city of New Orleans as
298 shall have accepted the "Act to revive the charters of the several banks located in the city of New Orleans" shall be, and they are hereby, authorized to accept the present act amendatory thereof and forthwith to give notice of said acceptance to the Governor of this State: Provided, however, That the acceptance of said act by the board of directors shall only be provisional, and it shall be the duty of the presidents and directors of the several banks to convene a meeting of the stockholders of the respective banks, to take place at the different banking-houses within thirty days after the passage of this act, for the purpose of taking into consideration and deciding on the expediency of accepting the present act, and in

case a majority of the stockholders holding more than one-half of the whole number of shares of the stock of said bank shall decide that it is inexpedient to accept said act, then and in such case the acceptance of the board of directors shall cease to have effect.

SEC. 14. Be it further enacted, &c., That in case any bank shall have convened a meeting of its stockholders in pursuance of the 9th section of an act to which this is an amendment and at said meeting it shall appear that a majority in amount of the stockholders reside out of the State and are not represented therein by agents having powers competent to enable them to accept or reject said act, the attorney general, by and with the advice of the board of currency, may suspend all action against such bank for a period not exceeding forty days; and in case any bank shall by a vote of its
299 directors, within five days after the publication in the State Gazette of this act, accept provisionally the same and the one to which it is an amendment, the attorney general may, by and with the advice of the board of currency, suspend proceedings against those banks for a period not exceeding forty days: Provided, however, That the acceptance of said acts by the board of directors shall only be provisional, and in case a majority of the stockholders holding more than one-half of the whole number of shares of the stock of said bank shall decide that it is inexpedient by the board of directors shall be deemed not to have been made and shall have no effect.

SEC. 15. Be it further enacted, &c., That when the attorney general institutes proceedings against any bank or banks in virtue of the present act, or the act to which this is an amendment, and shall deem it necessary to apply for an order or writ of sequestration or injunction, or other conservative order, the court may grant said orders or writs on the simple petition of the attorney general without requiring any oath or security, provided the court before which the proceedings are pending shall be fully satisfied that the issuing of said writ is necessary for the protection of the State or the creditors of such bank; and the defendant or defendants in said suit or suits shall not be authorized or have the right to have said orders or writs set aside by giving bond and security as in ordinary cases; and said orders and writs shall continue and remain in full force until the final decision of the case, and the property sequestrated shall be placed in the possession of the board of currency, who
300 shall be authorized, until a decree shall have been rendered, to preserve the property sequestrated and conservative acts in relation thereto; and all civil actions brought by the attorney general against any bank under this act or the act to which this is an amendment shall be tried without the intervention of a jury, and shall have the preference to be tried before all other causes, both in the first instance and on the appeal.

SEC. 16. Be it further enacted, &c., That if any bank shall neglect or refuse to call the meeting of stockholders in the manner and at the time hereinbefore provided the president and directors of such bank so neglecting or refusing shall be subject each to a fine of one thousand dollars for every day they so neglect or refuse to convene

said meeting of stockholders, unless such president or director shall make it appear that he voted for such call.

SEC. 17. Be it further enacted, &c., That whenever a mortgage prior to the one given to a bank shall exist and it be necessary for the bank, in order to prevent a heavy loss, to purchase the property thus mortgaged when it is advertised to be sold under seizure, then and in such case only it shall be lawful for said bank to increase temporarily its dead weight by purchasing the mortgaged property, provided that said bank shall previously have obtained the express and written authorization and consent of the board of currency to do so.

SEC. 18. Be it further enacted, &c., That hereafter in case of the failure or neglect of any debtor who has a loan other than
301 loans on stock from any bank in this State, secured by a mortgage with a confession of judgment, to pay the instalment and interest thereon, as required by the first clause of the third section and the seventh section of the act to which this is an amendment, the bank holding and owing the mortgage shall have the right to apply for and obtain, in the manner now provided by law, an order of seizure and sale for the whole amount of the debt or obligation, but that upon a sale upon the property seized no greater amount of cash shall be required from the purchaser than may be necessary to pay the per cent. and interest which the original debtor has failed to meet, with the costs, and that the purchaser shall come under the same obligations as the original debtor and upon the same conditions for the payment of the balance of the debt: Provided, That in case of the failure or neglect of the purchaser to pay any instalment as it becomes due, and the interest on the balance of the debt, it shall not be necessary for the bank to obtain another order of seizure and sale, but that it shall be the duty of the clerk of the court of which the first writ issued, upon the application of the plaintiffs or their attorney, to issue another order of seizure and sale for the balance due, endorsing thereon the amount required to be paid in cash, and that the sale shall be made in the same way as before and upon the same conditions, and this shall continue to be done from time to time until the whole amount of the debt, interest, and costs is collected: Provided further, The debtor shall not have the right to require that the property
302 mortgaged shall be offered for sale or sold in any other manner, except in block, without the consent of the bank.

SEC. 19. Be it further enacted, &c., That the third section of the act to which this is an amendment shall not be so construed as to allow the benefit of the delays granted by said section to any debtor of a bank unless he shall strictly comply with the terms of said section and punctually pay his instalments as they will fall due; and if any debtor of a bank shall neglect or refuse to comply with the terms or fail to pay any of his instalments when due, then he shall be deprived of the benefits granted by said section: Provided, That a delay of fifteen days be granted to debtors residing in the city of New Orleans and forty days to those residing in the country.

SEC. 20. Be it further enacted, &c., That the first section of the

aforesaid act be, and the same is hereby, so amended that deposits on interest, the payment of which cannot be demanded within ninety days, shall not be considered as a cash liability of the bank receiving the same: Provided, That said deposits shall always be represented by the first available assets of the bank placed in the "dead weight."

SEC. 21. Be it further enacted, &c., That the time fixed by the 13th section of the act to which this act is amendatory for the resumption of specie payments by all the banks of this State be, and the same is hereby, extended to the first Monday in December, 1842, and that no protest of the notes of any bank shall operate a forfeiture of the charter until the first Monday in December, 1842.

303 SEC. 22. Be it further enacted, &c., That this act shall be in force from and after its passage, and shall be published and promulgated in the State paper in preference to all other acts approved previous to it.

Approved March 7, 1842.

No. 96.

An act to amend article three thousand three hundred and thirty-three of the Civil Code of Louisiana.

Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That article three thousand three hundred and thirty-three of the Civil Code of Louisiana be, and the same is hereby, so amended that the rule requiring the reinscription of mortgages at the expiration of ten years from date of their registry shall not apply to the mortgages which have been or may be given by the stockholders of the various property banks of this State.

Approved March 11, 1842.

No. 98.

An act to provide for the liquidation of banks.

304 SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That whenever any bank of this State located in the city of New Orleans by any act, omission, or violation of law shall have incurred the forfeiture of its charter the attorney general or the district attorney shall present a petition in the name of the State to a court of competent jurisdiction setting forth such acts, omissions, or violations and praying that the charter of said bank be declared null and void and the corporation dissolved. The court shall try such case summarily and without the intervention of a jury; and if, on the trial thereof, it shall appear to the court that the said bank has incurred a forfeiture of its charter it shall declare the same null and void and that the corporation be dissolved.

SEC. 2. Be it further enacted, &c., That when the board of directors of any bank or six stockholders thereof owning together at least one-fourth of its capital stock shall present a petition to a court of justice

setting forth that the charter of such bank has been forfeited or that, from the reduction of its capital, such corporation no longer affords a reasonable security to such persons as may deal with it, or that it is expedient to the stockholders that the same be dissolved, and praying that a meeting of the stockholders thereof be convened for the purpose of deliberating and determining on the expediency of surrendering the charter of such bank, the court to which such petition is addressed shall render an order that a meeting of the
305 stockholders of such bank shall be held before some notary public for the purposes mentioned in the petition and the attorney general shall *ex officio* represent the absent stockholders and creditors, and his compensation shall in no case exceed five hundred dollars. A reasonable delay shall be fixed for said meeting, which delay, in case all the stockholders of the bank reside in the city of New Orleans, shall not exceed one week and in no case exceeding sixty days, and public notice thereof shall be given in French and English twice a week during such delay.

SEC. 3. Be it further enacted, &c., That at said meeting every stockholder present, in person or by attorney, shall have the right to vote on the question of surrendering the charter, and the opinion of the majority in amount of all the stockholders shall prevail.

SEC. 4. Be it further enacted, &c., That it shall be the duty of the notary before whom such meeting shall be held to record the proceedings thereof and to return a duly certified copy of such record to the court which rendered the order, and also, in case the surrender of the charter be determined upon, to deposit a copy thereof in the office of the secretary of state and in that of the board of currency.

SEC. 5. Be it further enacted, &c., That any stockholder who may consider himself aggrieved by said proceedings shall have the right to file his opposition thereto, which opposition shall be tried summarily. If the same be sustained the proceedings may be dis-
306 missed entirely or remanded before the notary, to be proceeded in according to law as the justice of the case may require.

SEC. 6. Be it further enacted, &c., That if no opposition be made to said proceedings, or if any opposition made thereto be overruled, the court shall examine the same; and, if a majority in amount of all the stockholders be found to have voted for the surrender, it shall render a decree homologating the proceedings and annulling the charter of such bank, and said corporation shall thenceforward be dissolved.

SEC. 7. Be it further enacted, &c., That in all cases when an appeal shall be taken from any decree annulling the charter of a corporation said appeal shall be taken up with the least possible delay and shall be tried by preference, but said decree shall be provisionally executed so far as to enable the commission-s to take possession of the property and assets of the bank and to do and perform all needful conservatory acts.

SEC. 8. Be it further enacted, &c., That when a decree homologating the proceedings of stockholders who have voted for a surrender of a charter in cases of voluntary liquidation or of forfeiture in cases of forced liquidation shall have been rendered the court

shall, at the same time, order all judicial proceedings against such bank to be stayed; which order shall be published in two newspapers printed in the city of New Orleans once a week, in French and English, during one month.

SEC. 9. Be it further enacted, &c., That the commissioners shall be appointed as follows: In case of forced liquidation one
307 shall be appointed by the court, one by the Governor, and one by the presidents of the banks that are bound to receive the circulation; and, in case of voluntary liquidation, one shall be appointed by the Governor, one by the stockholders at their meeting to decide of the surrender, and one by the presidents of the banks aforesaid; that whenever banks having branches in the country shall go or be forced into liquidation the board of directors of such branches in office at the time may represent the said commissioners in matters appertaining to the liquidation of the said branches, so far as may be necessary, but under the control and supervision of said commissioners: Provided, That the choice of said commissioners, as far as practicable, may be selected from among the stockholders of the liquidating bank.

SEC. 10. Be it further enacted, &c., That the commissioners appointed under this act shall in all cases be citizens of the United States, residents of the State of Louisiana, and in solvent circumstances, and shall, each of them, before entering on the discharge of their duties, be bound to give bond in favor of the judge before whom the proceedings are pending for the benefit of all concerned, with two good securities, to be approved by the judge and by the board of currency, in a sum which shall not exceed fifty thousand dollars, conditioned for the faithful and proper discharge of the duties imposed on them by this act or any other acts which may be passed amending the same.

SEC. 11. Be it further enacted, &c., That the judge of the court before which the proceedings are pending shall have the
308 power to remove any commissioner for neglect or malfeasance; and, in case of such removal or of death or disability, the vacancy shall be filled by the same authority by which such commissioner was originally appointed.

SEC. 12. Be it further enacted, &c., That the commissioners appointed under this act shall forthwith demand and receive from the board of directors of the bank or such officer or officers as they may delegate for that purpose all the property and effects of every description thereunto belonging, and all books, accounts, and papers thereunto pertaining; and any officer who shall refuse to deliver up such effects or books, accounts, and papers, or shall wilfully offer any obstruction in the way of said commissioners, with a view to prevent them from taking possession thereof, or shall wilfully retain or conceal any such property, effects, books, accounts, or papers, shall be imprisoned by order of court until he delivers up the same or until he shall cease to offer such obstruction; and in case of fraudulent embezzlement or destruction of any such effects, books, accounts, or papers said officer or officers shall, on conviction

of such offence, be imprisoned for a term not less than three months nor more than twelve months.

SEC. 13. Be it further enacted, &c., That at the time the commissioners shall take possession of the property and effects of a bank it shall be their duty to cause an exact inventory of such property and effects to be made by a notary public in the presence of the
309 officers of said bank delivering up the same. It shall also be the duty of said notary, at the time of making the inventory of the property and effects of the bank, immediately and on the spot to cancel and destroy, under the inspection of the commissioners and of the board of currency, all the notes of such banks which may be on hand at the time, even those not yet completed, if such there be, and this in the presence of two witnesses and of the officer or officers of the bank, if any be present, of all which mention shall be made in the inventory.

SEC. 14. Be it further enacted, &c., That when any public work or improvement belonging to a bank and committed to the charge of said commissioners shall be seized and sold in consequence of the power vested by this bill to said commissioners they, in the sale and transfer of said public work or improvement to the purchaser, may include all the rights and privileges to exact toll or compensation for the use of said works or any part thereof, or for any article furnished by them, subject to all the regulations and restrictions provided by the charters of such banks respectively: Provided, That such work and privileges shall in no case be sold for a period exceeding that for which the banking privileges of said corporations were granted by their respective charters: And provided further, That if such bank shall have granted indulgence to its debtors in pursuance of the 7th section of the act entitled "An act to revive the charters of the several banks located in the city of New Orleans, and for other purposes," the works and improvements constructed by it shall not be sold unless such sale be necessary for the
310 payment of its debts.

SEC. 15. Be it further enacted, &c., That the commissioners shall immediately, and under the supervision of the board of currency, distribute as equally as possible the available cash assets of the liquidating bank among such banks as shall be bound to receive its circulation, in conformity with the 4th section of an act entitled "An act to amend an act to revive the charters of the several banks located in the city of New Orleans, and for other purposes:" Provided, That such distribution shall not in any manner interfere with the security to be given to the State in certain cases by property banks going into liquidation.

SEC. 16. Be it further enacted, &c., That the said commissioners shall proceed as speedily as practicable to redeem the notes of the banks in circulation, and to that effect it shall be lawful for them to obtain a loan of money from any individual or corporation at a rate of interest not exceeding ten per cent. per annum, and to mortgage or pledge the property of such bank for the purpose of securing the reimbursement of such loan.

SEC. 17. Be it further enacted, &c., That said commissioners shall

in all cases, and immediately after their appointment, give public notice to all persons holding the notes of the bank for which they are appointed to present the same to them, and whenever a note is presented one of them shall write or stamp on such note the word "registered," and affix his signature thereto, of all which notes thus stamped and signed they shall keep a correct registry, specifying the dates, letters, and denominations thereof. A separate registry shall be kept of such notes as are held by the banks which are bound to take up a part of the circulation of a liquidating bank, in pursuance of the eighth section of the act entitled "An act to revive the charters of the several banks located in the city of New Orleans, and for other purposes," approved February 5th, 1842, and the fourth section of the act to amend the same.

SEC. 18. Be it further enacted, &c., That said commissioners shall from time to time, and as often as they shall have sufficient funds on hand, file a tableau of distribution of such funds among all the creditors of the bank, according to their respective ranks or privileges. In preparing said tableau it shall be sufficient to put down the number, date, and denomination of each note which shall be presented for registry without inserting the names of the holders thereof, and no opposition shall be received founded on a note which shall not have been presented for registry, saving to the holders of such notes the right to be paid out of any subsequent tableau: Provided, That a sum equal to one-third of the amount of outstanding notes shall always be reserved by the commissioners for at least one year after the filing of the tableau of distribution. The notes held by the banks which are bound to take up a portion of the circulation of the liquidating banks shall not be included in the tableau of distribution unless it should appear that the assets delivered over to such banks have been or will be insufficient to indemnify or reimburse the advances made by it to the liquidating bank; but, previous to making a final distribution of the assets of the bank, the banks receiving its circulation shall render their accounts to the commissioners of liquidation, and in case of insufficiency of the assets of a bank to pay all the debts thereof the said banks shall bear their proportion of the loss in the manner provided by the fourth section of the act entitled "An act to amend an act entitled An act to revive the charters of the several banks located in the city of New Orleans, and for other purposes."

SEC. 19. Be it further enacted, &c., That in case on such settlement a balance should be found against any bank which had received the circulation of a liquidating bank such balance shall be paid over to the commissioners.

SEC. 20. Be it further enacted, &c., That said commissioners are empowered, by and with the authorization of the court, to compromise all claims and demands made by or against the corporation they represent: Provided, That ten days' public notice of the application be given to all persons interested to show cause to the contrary.

SEC. 21. Be it further enacted, &c., That it shall be the duty of the commissioners to deposit, in their joint names, all moneys re-

ceived by them in their said capacity, as soon as received, in such of the banks which shall have accepted the act entitled "An act to revive the charters of the several banks located in the city of New Orieans, and for other purposes," approved February 5th,
313 1842, as shall be designated by the board of currency.

SEC. 22. Be it further enacted, &c., That the commissioners shall keep a book in which the minutes of their proceedings shall be regularly recorded, which book shall be open to the inspection of any creditor or stockholder of the corporation of the court before which the proceedings are pending and of the board of currency. In case of division of opinion among the commissioners that of the majority shall prevail, but in such case the votes shall be taken by yeas and nays.

SEC. 23. Be it further enacted, &c., That for the transaction of all business except pledging or mortgaging property of the corporation, as provided by this act, any two commissioners shall be sufficient.

SEC. 24. Be it further enacted, &c., That in all matters not herein specially provided for the powers, duties, and liabilities of the commissioners shall be the same as those conferred or imposed on syndics of insolvent estates, and the proceedings the same as those provided by the acts now in force relative to the voluntary surrender of property.

SEC. 25. Be it further enacted, &c., That the commissioners appointed under this act shall be entitled to receive, in full compensation for their services, a commission of three per cent. on the proceeds of the property of the corporation intrusted to their charge, this commission to be equally divided among them and to be paid, as part of the costs of liquidation, out of the assets of the cor-
314 poration, but if, in any case, this compensation should be deemed by the judge of the court inadequate he may increase it: Provided, That in no case whatever the said compensation shall exceed three thousand dollars per annum for each commissioner for each and every year, not exceeding four years, during which the liquidation of such corporation shall continue.

SEC. 26. Be it further enacted, &c., That as soon as the commissioners shall have paid off all the debts of the corporation committed to their charge they shall distribute any balance that may remain in their hands among the stockholders thereof ratably, according to the number of shares held by each: Provided, however, That this distribution shall not be made until public notice shall have been given calling on all persons having demands against the banks to present the same for payment, which notice shall be inserted in French and English once a week during three months in at least two of the newspapers printed in the city of New Orleans and two others in each of the congressional districts. When satisfactory proof shall be adduced to the court that the affairs of the corporation have been fully and finally settled, and that the commissioners have paid over to the parties entitled to receive the same all the funds in their hands, the court shall order the bonds executed by said commissioners to be cancelled: Provided, That thirty days' previous notice be given by advertisement in French and English

of the application for such cancellation, and that any party interested may file his opposition thereto.

315 SEC. 27. Be it further enacted, &c., That whenever it shall be made to appear to the board of currency that any bank desirous of going into liquidation has paid its deposits and circulation, or has deposited in some other bank in this city a sum sufficient to pay such deposits and circulation, or has made an arrangement with any other bank whereby such other bank shall bind itself to pay such deposits and circulation, or has furnished to the satisfaction of the board of currency good and sufficient guarantees for securing the payment of its deposits and circulation, the board of currency shall certify such fact to the court before which the proceedings shall be instituted, and said court may authorize the stockholders to appoint one or more commissioners and fix their compensation, and in that case the stockholders may appoint the commissioners of liquidation in the same manner and under the same regulations and restrictions as the directors of such bank are required to be elected, and the commissioners, when the proceedings shall have been duly homologated, shall have authority to liquidate the affairs of such bank under the exclusive direction and control of the stockholders thereof: Provided, That said commissioners shall still remain under the supervision of the board of currency, so far as relates to the extension of time to be granted to the debtors of said bank, in conformity with the act entitled "An act to revive the charters of the several banks located in the city of New Orleans, and for other purposes."

316 SEC. 28. Be it further enacted, &c., That the foregoing provisions relative to the liquidation of banks shall not apply to those banks in which the State is a stockholder or for which it has issued bonds or for the debts or obligations of which the State is in any manner responsible; that said banks shall not be permitted voluntarily to go into liquidation under the provisions of this act, and if a decree of forfeiture of its charter be rendered against any one of such banks the corporation shall not be deemed to be dissolved, but it shall retain all its corporate powers and privileges, with the exceptions hereinafter mentioned—that is to say, if such bank shall, by a vote of the stockholders thereof duly convened for that purpose, consent and agree, within ninety days after said decree shall have been rendered, 1st, to renounce the right of issuing notes or obligations in any form intended for circulation; 2d, that all that portion of its assets which, in the act entitled "An act to revive the charters of the several banks located in the city of New Orleans, and for other purposes," approved February 5th, 1842, is denominated the "dead weight," or if such assets should not, in the opinion of the board of currency, be deemed sufficient, then other assets to a sufficient amount should be immediately converted into a sinking fund applicable exclusively to the payment or purchase of the bonds of the State issued to or for account of said bank, the whole to remain in possession of the banks, but under the direction and superintendence of the board of currency, until the final extinguishment of said bonds in principal and interest and of all

liabilities of the State for or debts due to it by such banks, the bank so consenting and agreeing shall retain all its other
317 corporate powers and privileges, and shall, moreover, have the right to charge interest at the rate of eight per cent. per annum on all loans having more than ninety days to run: Provided, however, That if at any time the sinking fund established by this section should be deemed insufficient to secure the State the Governor, on the recommendation of the board of currency, may require that the same be increased to a sufficient amount, and in default of the said increase being made by any bank the said bank shall go into liquidation in the manner provided for in the twenty-ninth section of this act. The Legislature may enact that the affairs of such bank shall be liquidated in a manner different from that above provided.

SEC. 29. Be it further enacted, &c., That in case any one of the banks mentioned in the preceding section, against which a decree of forfeiture shall have been rendered as aforesaid, should not enter into the foregoing arrangements, then and in that case it shall be liquidated as follows, to wit: As soon as the Governor shall have ascertained that such decree has been rendered it shall be his duty, by and with the advice and consent of the senate, to appoint six managers of such bank; and if the senate be in recess, then the Governor shall make the appointment of said managers, who shall elect one among themselves as president, and by whom the affairs thereof shall thereafter be conducted in its corporate name and under the direction of the board of currency; and it shall be the duty of the president and directors of such bank, who may be in office at the time such
318 decree shall be rendered, to deliver up to said managers all the property, effects, debts, and assets of every description, and said managers shall be, and are hereby and until otherwise provided by the Legislature, invested with the same powers and duties and subject to the same liabilities, penalties, and restrictions provided by the respective charters of said banks, so far as not inconsistent with this act and the act entitled "An act to revive the charters of the several banks located in the city of New Orleans, and for other purpurposes," and the act amending the same: Provided, That if at any time after said decree the stockholders of said bank shall cause to be returned and given up to the State all the bonds issued by the State in favor of or on account of said bank, then and in that case the Governor, after cancelling the bonds, shall, by proclamation, announce and declare, if requested by the stockholders or a majority of them in number and amount, that they are reinvested with all their rights in said bank as they exist at the time, and the liquidation of said bank shall thereafter be conducted in the same manner as provided for in other cases: Provided, That in all stages of the proceedings under the twenty-eighth and twenty-ninth sections of of this act the court shall, on application of the attorney general, if it deem it necessary, to secure the interest of the State and of the stockholders, order the sequestration of the assets of said bank or grant such other conservative process as may be deemed necessary, in the manner and form provided for in act entitled "An act to

amend an act entitled An act to revive the charters of the
319 several banks located in the city of New Orleans, and for other purposes," approved February 5th, 1842.

SEC. 30. Be it further enacted, &c., That if any president and directors or officers of any bank referred to in the foregoing section should refuse to deliver up the assets of such bank to the managers appointed to liquidate the affairs thereof, or if they or any other person whatever should offer any hindrance or obstruction to the taking possession thereof by said managers, the court which rendered the decree of forfeiture may, on due proof of such facts and on motion of the attorney general, order a writ of sequestration to issue against all assets of such bank until said decree shall have been complied with.

SEC. 31. Be it further enacted, &c., That any bank against which proceedings have been or may be instituted for a forced liquidation shall have the right to avail itself of the provisions of the twenty-seventh section of this act.

Approved March 14, 1842.

No. 92.

An act to facilitate the liquidation of the property banks chartered by this State.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That
320 whenever any stockholder in any of the property banks in liquidation shall tender to the persons superintending such liquidation any of the outstanding bonds of the State issued in favor of such bank he shall be entitled to have the property mortgaged by him to secure the stock released from such mortgage for the amount of the capital of the bonds so tendered and of the interest which may have accrued thereon at the time of the tender, and in lieu of said bonds certificates bearing the same rate of interest as the bonds shall be issued for the same amount in favor of such stockholder, in each of which certificates it shall be stated that it is issued to a stockholder in lieu of a bond and is not secured by mortgage nor by the faith of the State.

SEC. 2. Be it further enacted, &c., That whenever any person shall be indebted to any liquidating bank for any stock loan or otherwise and shall tender to such bank in offset or part offset of such loan or debt any of the bonds of the State issued in favor of such bank the person charged with the liquidation of such bank shall receive such loans in offset, as aforesaid, and shall release in such event only the mortgage granted to secure the stock loans or the original mortgage granted to secure the stock up to the amount of the capital of the bonds thus received in offset and of the interest already accrued thereon at the date of the tender, provided, however, such tender shall always be either of an equal number of bonds of each series or of bonds belonging to some series already due, or to the series next falling due, and that it shall be the duty of
321 each of the banks of the State at all times to receive in off-

set or part offset of debts due to it its own debts, when liquidated and past due, whether for circulation, deposits, or arising from any other source whatever, and whether such bank be or be not in liquidation, and without reference to the date at which the debtor offering such tender may have acquired the claim by him offered in offset: Provided, That no defaulter to bank shall have this right of offset for the amount of his defalcation: And provided further, That in all the payments thus made as aforesaid by stockholders upon stock debts ten per cent. be paid in specie.

SEC. 3. Be it further enacted, &c., That the assets of the Consolidated Bank of the Planters of Louisiana and those of the Citizens' Bank of Louisiana are and shall remain in the possession and under the exclusive management of the State of Louisiana until final payment by each of them of all the State bonds issued in their favor.

SEC. 4. Be it further enacted, &c., That the property banks of this State, whether in liquidation or not, through their authorized agents, shall be authorized to contract with their stockholders for a privilege and mortgage on the future crops, revenues, and rents of the property mortgaged to secure their stock or stock loan to an amount sufficient to pay and extinguish the annual instalments as they fall due by the stockholder on his stock loan, as well as the annual interest, in advance, due on the balance of said stock loan, and that said privilege shall be paid out of such future crops, revenues,
322 or rents in preference to all other claims, except existing privileges accorded by law and the privilege which may be granted to the furnisher of all necessary and indispensable supplies for the carrying on and maintenance of said property, and that the recording of said contract in the office of the recorder of mortgages for the parish where the property mortgaged is situated shall be due notice of the existence of said privilege and mortgage to all persons whatsoever into whose hands the said crops, revenues, and rents may come.

SEC. 5. Be it further enacted, &c., That the managers of said property banks shall have the power of allowing the stock of said banks to be transferred and secured upon city or country property indis*tinctly* whenever the security offered shall be deemed by them sufficient and shall be otherwise in accordance with the provisions of their respective charters, any laws to the contrary notwithstanding; and if one piece or several pieces of property are mortgaged *in globo* in favor of the bank to secure stock or loans on mortgage the managers shall have the right, for the benefit of said institution, to agree to a division of the stock or loans made so as to divide the mortgages and make them rest and bear on each piece of property thus divided, agreeably to an estimate previously made, in proportion to the appraised and distinct value of each property or part of property mortgaged to said banks, and that it shall be lawful for the managers of the Citizens' and of the Consolidated Banks to receive amicably, in payment for what is due to those banks, in capital
323 and interest, by any of their debtors, any of the property offered to be transferred and sold to those institutions by such

debtor or debtors in payment of his other debts arising from either stock loans or otherwise, with the following restrictions, to wit: 1st, that, in the opinion of all the managers, known by yeas and nays, entered previously in the minutes of deliberation, such debtor or debtors is or are absolutely unable to pay, and that the property offered in payment is sufficient under cash appraisement to pay all that is due in capital and interest and one-fourth over and above the amount due, provided this surrender or transfer of property includes all the property already mortgaged to these banks, respectively; 2d, that the appraisement above mentioned shall be made for each of said banks, respectively, by three appraisers, duly sworn to that effect, before any judge or justice of the peace, one of said appraisers to be appointed by the secretary of state, one by the debtor, and the other by the managers, and that the three appraisers do agree on the report by them to be made to the bank as soon as possible, and that any manager who shall violate any of the dispositions contained in the above section shall be individually liable to pay five thousand dollars to the bank, and shall also be liable to whatever damages the bank and State may suffer by said violation.

SEC. 6. Be it further enacted, &c., That whenever any property bank shall cause to be seized in a suit against any of its stockholders the property mortgaged to secure his stock it shall be lawful
324 for such bank to purchase not only the property, but the stock for which it is mortgaged, which stock thus purchased shall be considered as extinguished, and shall not again be issued or transferred by said bank.

SEC. 7. Be it further enacted, &c., That if any property bank not now in liquidation shall hereafter become so it shall become *ipso facto* subject to all the provisions of this act, and it shall be lawful for any such bank not in liquidation to adopt the mode of payment provided for by this act, by and with the advice and consent of a majority in amount of the stockholders, duly convened according to law, and after having obtained the consent of the Governor of the State.

SEC. 8. Be it further enacted, &c., That the twenty-ninth section of the act providing for the liquidation of the banks, approved fourteenth March, eighteen hundred and forty-two, be, and the same is hereby, modified and explained, so that the powers, rights, and duties of the managers of the Consolidated Bank and of the Citizens' Bank of Louisiana shall be the same, and they shall be subject to the same responsibilities as those defined by law with regard to the president and directors of these institutions before their being brought into liquidation, so far as not inconsistent with the provisions of this act, with the only exception that the managers of the said bank in liquidation shall not, under any pretext whatsoever, issue notes or bonds bearing the appearance of or for the purpose of circulation, the said managers being also liable to the said fines and restrictions established by the laws now in force in
325 relation to the property banks in liquidation; and, whereas these banks are in liquidation and have no longer the power to issue their notes or bonds for circulation, that all the fundamental

rules contained in and penalties inflicted by the first section of the act approved fifth February, eighteen hundred and forty-two, entitled "An act to revive the charters of the several banks located in the city of New Orleans, and for other purposes," in relation to the "dead weight," and the movement of the banks shall no longer apply to these banks, the same being hereby repealed so far as relates to these institutions: Provided, however, That nothing herein contained shall be so construed as to deprive the debtors of these banks of the delays to which they are entitled by virtue of the other provisions and sections contained in the aforsaid act, approved fifth February, eighteen hundred and forty-two, and in the act approved seventh March, eighteen hundred and forty-two, amending the abovementioned act of the fifth February, eighteen hundred and forty-two: Provided, also, That no debtor not in arrears for any debt other than stock loans shall be compelled to pay more than ten per cent. on the original amount loaned and the interest, in advance, at one time.

SEC. 9. Be it further enacted, &c., That from the fourth Monday of the month of January, eighteen hundred and forty-four, and each succeeding year, on the same day, or as soon thereafter as possible, the Governor, by and with the advice and consent of the senate, shall appoint six managers for each of said banks. The said managers shall remain in office for the term of one year
326 from the fourth Monday of January of every year, provided they shall have the right to remain in office after the expiration of the said term until they are replaced or reappointed, and that, with the exception of the president, the managers shall be entitled to no remuneration for the services by them rendered, and that in no case shall the salary of the president exceed the annual sum of four thousand dollars.

SEC. 10. Be it further enacted, &c., That the Citizens' and Consolidated Banks shall have the right and are by these presents authorized, with the consent of the holders of the bonds issued by the State in favor of either of these institutions, to extend and prolong the time of payment of any of such bonds as they may fall due for a term not exceeding fifteen years, and at the expiration of the bonds of the State to make arrangements with said bearers to extend and prolong the time of payment, provided said extension does not exceed the term of ten years, and in case that the time of the duration of the charter of said banks (the expiration of the last bonds) be less than ten years, then said extension shall be for a period that shall terminate with the charter.

SEC. 11. Be it further enacted, &c., That the twenty-fourth section of the act to incorporate the Citizens' Bank of Louisiana be and is so amended that in future no mortgage granted to secure stockholders shall bear an interest of ten per centum per annum after falling due, except only on such portions of the debt which shall have not been paid, and not on the whole debt becoming thus exigible.

327 SEC. 12. Be it further enacted, &c., That the Legislature of Louisiana reserve the right to alter or amend this act when-

ever it may be deemed expedient, and that this act shall take effect from and after the publication in the State Gazette.

Approved April 5th, 1843.

No. 96.

An act amendatory of the several acts relative to the banks of the State.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That in future the board of currency shall consist of two members only, to wit, the secretary of state and the treasurer of the State, each of whom shall, *ex officio*, be a member thereof and shall be entitled only to the yearly salary of twelve hundred dollars, free from all expenses of office, the whole to be paid in the manner and form determined in the laws to which this is an amendment: Provided, That the expenses of the board do not exceed the yearly sum of one thousand dollars: Provided, That the provisions of this section shall not take effect until the term of the present members of the board of currency shall have expired, who shall receive each, during that term, a salary of twelve hundred dollars per annum.

328 SEC. 2. Be it further enacted, &c., That the commissioners of the banks in liquidation shall in future be entitled only to a yearly salary of one thousand dollars each, free from the expenses of office, provided said expenses and all others do not exceed yearly the sum of five hundred dollars, the whole to be paid in conformity with existing laws.

SEC. 3. Be it further enacted, &c., That it shall be lawful for the several banks of this State to purchase at judicial sales hereafter or by compromise for stock loans already made any shares of their own capital stock which may be pledged to them, provided such purchase be sanctioned by a vote of two-thirds of the whole board, and provided also that the stock so purchased shall be deduced from the amount of capital stock in the public statement to be made by the banks or by the board of currency.

SEC. 4. Be it further enacted, &c., That the commissioners representing the several banks in liquidation, as provided in this act, shall be, and they are hereby, invested with full power, in their own names and capacity, as commissioners, to institute, prosecute and defend any suit for or against any such banks in liquidation, whether the defendants in such suit be directors or stockholders of such bank in liquidation or other persons.

SEC. 5. Be it further enacted, &c., That this act shall be in force immediately after its passage.

Approved April 6th, 1843.

329 No. 58.

An act amendatory of the several laws relative to the Citizens' Bank of Louisiana and Consolidated Association of the Planters of Louisiana.

SEC. 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That from and after the first day of May, one thousand eight hundred and forty-five, it shall not be lawful for the Citizens' Bank of Louisiana and Consolidated Association of the Planters of Louisiana to receive their unmatured coupons or bonds or other unmatured debts in payment of debts due to them.

SEC. 2. Be it further enacted, &c., That it is hereby made the special duty of the board of managers of said banks to apply all monies collected by them to the immediate payment of all matured coupons of interest on bonds and matured bonds issued in their behalf by the State, as well as to all their other matured obligations, and to employ all surplus funds, after due provision of running interests and expenses, to the redemption of the unmatured bonds of said banks, first maturing or other unmatured bonds, debts, or obligations of said banks, respectively, if any of such unmatured bonds, debts, or obligations first maturing or otherwise, respectively, can be purchased at par or less.

SEC. 3. Be it further enacted, &c., That whenever a stockholder shall refuse or neglect to insure improved city or town property mortgaged by him to secure stock the board of managers shall have the right to insure the same and have an immediate
330 claim upon said property for the premium paid and interest thereon at the rate of eight per cent. per annum; also a privileged lien for the amount so disbursed and the interest thereon on the property thus insured; and, in case of the loss of the property, that the bank shall be invested with all the privileges derived from or belonging to the policy of insurance and with a special privilege on the proceeds thereof in the hands of the company.

SEC. 4. Be it further enacted, &c., That the provisions of the fifth section of the act of the fifth of April, one thousand eight hundred and forty-three, entitled "An act to facilitate the liquidation of the property banks chartered by the State," shall apply to and be binding upon all persons charged with the administration of said banks, respectively, with this qualification, however, with reference to appraisement, that it shall be sufficient if the property at an appraisement of cash and credit according to the proportions of the cash amount and the unmatured amounts, respectively, owing, shall be appraised at an amount equal to the entire indebtedness secured on the property so to be taken in payment.

SEC. 5. Be it further enacted, &c., That section eleventh of an act entitled "An act to facilitate the liquidation of the property banks chartered by this State," approved the fifth of April, one thousand eight hundred and forty-three, be so amended as that an interest of eight per cent. per annum for the future shall be paid by all stock-

holders in arrears in their payments, which interest shall be
331 computed on the principal, and hereafter five per cent. per annum interest shall be paid on the arrears of interest exigible according to the provisions of the charter and by-laws of the bank as modified by law.

SEC. 6. Be it further enacted, &c., That the twelfth section of an act entitled "An act amendatory to the several acts relative to the Citizens' Bank of Louisiana" be, and the same is hereby, repealed.

SEC. 7. Be it further enacted, &c., That all laws contrary to the preceding sections be, and the same are hereby, repealed.

Approved March 10th, 1845.

No. 100.

An act to protect the State against loss on account of its liabilities for bonds issued for the use of the property banks.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That the ninth section of an act entitled "An act to facilitate the liquidation of the property banks chartered by this State," approved fifth of April, eighteen hundred and forty-three, be, and the same is hereby, repealed.

SEC. 2. Be it further enacted, &c., That it shall be the duty of the Governor, by and with the advice and consent of the senate, immediately after the promulgation of this act and every
332 second year thereafter in the third week of the session of the Legislature, to appoint three managers, who shall be citizens of the United States and of this State, who shall be competent accountants, and who shall not be under protest or in arrears for money due to either of the property banks of this State. The persons so appointed shall constitute a board called "the board of bank managers," to serve until replaced by new appointments. One of the individuals thus appointed shall be designated by the Governor as president of the said board, who shall receive for his services one thousand five hundred dollars per annum, and one shall be designated and act as president of the Consolidated Association, who shall receive one thousand five hundred dollars per annum, and one shall be designated and act as president of the Citizens' Bank of Louisiana, who shall receive two thousand five hundred dollars per annum, the whole to be paid by the said banks in the following proportions, viz: By the Citizens' Bank three thousand five hundred dollars and by the Consolidated Association two thousand dollars.

SEC. 3. Be it further enacted, &c., That it shall be the duty of the president of the board of managers of the Citizens' Bank of Louisiana and of the Consolidated Association of the Planters of Louisiana, immediately after the promulgation of this act, to call a meeting of their stockholders at the banking-houses of the said institutions, respectively, for the purpose of electing three directors for each from among themselves, and said election shall take place at least
333 thirty days after said notice shall have been given in two newspapers published in this city, in English and French, and

thereafter the said elections shall be held on the first Monday in February in each year, and each and every stockholder shall be entitled to vote at said election, as contemplated by their original charter; that the said directors, with the managers herein provided for, shall have power to manage and to do all things necessary and proper to the liquidation of the said banks, respectively, not inconsistent with this act and existing laws: Provided, however, That no act of the directors shall have any validity or force until it shall have received the sanction of two of the managers representing the State.

SEC. 4. Be it further enacted, &c., That the managers and directors of the Consolidated Association be, and they are hereby, authorized to extend, by endorsement or otherwise, the bonds of the State in favor of that bank six, nine, twelve, fifteen, and eighteen years: Provided, however, The stockholders shall be at liberty to discharge those bonds sooner, and the liquidation of the bank may be continued until the maturity and the payment of the bonds thus extended, and that the managers and directors of the Citizens' Bank be, and they are hereby, authorized to extend the bonds of the State in favor of that Bank due in eighteen hundred and fifty, by endorsement or otherwise, one, two, three, four, and five years: Provided, That the extension shall not be made with a rate of interest higher than the bonds now bear.

SEC. 5. Be it further enacted, &c., That it shall be the
334 duty of said managers and directors, within thirty days from the time of their being qualified and entering upon the duties of their office, to set apart a sufficient amount of assets of the Consolidated and Citizens' Banks (other than stock obligations) to pay the interest now due upon the bonds of the State issued for account of those banks, respectively, and to pay the same with the least possible delay compatible with the interest of the State, and to adopt such means as they may think best, not inconsistent with this act or other laws, to secure the punctual payment of the same for the future.

SEC. 6. Be it further enacted, &c., That it shall be the duty of said managers and directors to require such annual or periodical payment from the stockholders of the Consolidated and Citizens' Banks, independently of their stock obligations, as will accumulate a fund sufficient to meet faithfully and regularly the obligations of the State for account of these banks, provided the amount required from the stockholders of the Consolidated Association be divided in equal instalments, running from one to seventeen years; and in all cases where the instalments, as required by the charter, are not regularly met it shall be the duty of the managers to require a privilege and mortgage upon the crops or rents of the property mortgaged, as authorized by the fourth section of said act of eighteen hundred and forty-three; and in cases where the crops, revenues, or rents or all together are insufficient to meet the annual instalments, and when they remain unpaid, notwithstanding the precaution of tak-
335 ing such privilege and mortgage, and the property is found to be in inefficient or unfaithful hands, it shall be the duty

of the commissioners and directors to cause it to be sold, and to make such further arrangements, by compromise or otherwise, with the debtors of the said banks as they shall deem best calculated to secure the interests of said institutions.

SEC. 7. Be it further enacted, &c., That the stockholders of any of the property banks, through their managers or directors or otherwise, be, and they are hereby, authorized to negotiate and contract with the bondholders to procure the release of the State.

SEC. 8. Be it further enacted, &c., That it shall be the duty of the managers and directors of all the property banks to apply specially the proceeds of all property sold to satisfy stock obligations to the redemption of the bonds of the State issued for account of the said banks, respectively.

SEC. 9. Be it further enacted, &c., That so soon as any or all the property banks shall, by negotiation or payment or by depositing the amount in the State treasury, release and fully discharge the State from its liability the stockholders shall have the exclusive management of the same.

SEC. 10. Be it further enacted, &c., That the said board of managers shall not hereafter be competent to allow a higher salary than three thousand dollars to the cashiers or secretaries of each of said banks, nor to employ any other subordinate officers than may
336 be absolutely necessary for the business of said banks, nor to allow a stated salary to counsel or attorney, except in the city of New Orleans (which salary shall not exceed fifteen hundred dollars per annum); but the said board may, by special arrangement, fix the fees of attorneys for any particular case or suit.

SEC. 11. Be it further enacted, &c., That no election for directors by the stockholders shall be valid unless said election be made by a majority of the stockholders present or represented at the meeting.

SEC. 12. Be it further enacted, &c., That nothing in this act shall be so construed as to revive the charter or permit any banking or discounting privileges forfeited by the Citizens' Bank and Consolidated Association.

Approved 6th April, 1847.

No. 216.

An act supplemental to an act to protect the State against loss on account of its liabilities for the use of the property banks.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That all property mortgaged to secure stock, which property has been or may be purchased at the suit of the Citizens' Bank of Louisiana or of the Consolidated Association of the Planters of
337 Louisiana against any of their stockholders by or for account of said bank and which may be yet unsold shall be considered and remain subject to said stock; and it shall be the duty of the board of bank managers to proceed to the sale of all the real property belonging to the said banks or which the said banks may

hereafter acquire as fast as, in their judgment, the same can be sold without detriment to the interest of said banks.

SEC. 2. Be it further enacted, &c., That the board of bank managers be, and they are hereby, authorized to receive from the stockholders of the said banks the bonds of the State issued for account of said banks, as well as all matured obligations of said banks, the debtor making due allowance for the difference between the sums of interest that the debt to be paid may bear up to the maturity of said bonds in payment of their annual instalments: Provided, That the first series next falling due only of such bonds shall be received for that purpose.

SEC. 3. Be it further enacted, &c., That the stockholders of said banks be, and they are hereby, authorized to discharge their whole debt in the bonds of the State as provided in the next preceding section of this act; and in such case the board of bank managers may receive the whole series of bonds in equal proportions of each series then outstanding, the said debtor making due allowance for the difference between the sums of interest that the debt to be paid may bear and that which the bonds offered may bear up to
338 the maturity of said bonds; or, in case any stockholder may desire to pay a portion of his debt only, then said managers may receive such amount in bonds which would mature before or up to the period when the portion of said debt would fall due, the difference of interest being allowed as hereinbefore provided.

SEC. 4. Be it further enacted, &c., That the eleventh section of the act to which this is a supplement shall be amended and re-enacted so as to read as follows: That no election for directors shall be valid unless said election be made by a majority of the votes taken at said election.

Approved 4th May, 1847.

No. 59.

An act supplementary to the various acts relative to the liquidation of the Consolidated Association.

SECTION 1st. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That hereafter it shall not be lawful for the stockholders of the Consolidated Association of the Planters of Louisiana to pay any debts due by them to said institution otherwise that in specie: Provided, That this act shall not be construed so as to deprive any of said stockholders of the privilege of being released from his stock
339 mortgage by depositing with the bank an amount of the State bonds issued in its favor equal to said mortgage.

SEC. 2d. Be it further enacted, &c., That whenever any property mortgaged to secure a debt due to the Consolidated Association shall be sold at the suit of the board of directors of said bank and it shall become necessary for said bank to purchase in said property the same may be resold by the said board of directors free of all mortgage or incumbrance created on account of its original liability to the bank, whether for stock or otherwise: Provided, That the prop-

erty so purchased shall not be resold except at public auction, after thirty days' notice in the State paper: And provided, That in purchasing any property so sold at the suit of the bank the board of directors shall not be allowed to pay a price exceeding the amount due the bank and costs; and it is hereby made the duty of said board to use the proceeds of said property in redeeming the outstanding bonds of the State issued in favor of said bank and for no other purpose whatsoever.

Approved 20th December, 1848.

No. 113.

An act to provide for the future management of the affairs of the Consolidated Association of the Planters of Louisiana.

340 SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That on the third Monday of February in every year it shall be the duty of the Governor, by and with the advice and consent of the senate, to appoint three persons, citizens of the State, not stockholders in the Consolidated Association of the Planters of Louisiana, having the qualifications required by the second section of the act entitled "An act to protect the State against loss on account of its liabilities for bonds issued for the use of the property banks," approved the sixth of April, eighteen hundred and forty-seven, to be directors in the said Consolidated Association of the Planters of Louisiana, who shall have all the rights and perform all the duties now had and performed by the board of bank managers in that association and not in conflict with any of the provisions of this act.

SEC. 2. Be it further enacted, &c., That a president of said Consolidated Association shall be annually chosen from among the State directors by the board of directors of the said association, which said board shall consist of three directors chosen by the stockholders and three directors on the part of the State, appointed by the Governor.

SEC. 3. Be it further enacted, &c., That the president of said association shall be paid by said association, in quarterly payments, an annual salary of seven hundred dollars, and each of the other State directors an annual salary of four hundred dollars, payable in the like manner.

341 SEC. 4. Be it further enacted, &c., That the first appointment of State directors under this act shall take place as soon as the Governor shall be notified by the board of bank managers that the Citizens' Bank has fully complied with the provisions of the act "for the relief of the Citizens' Bank of Louisiana," passed March tenth, eighteen hundred and fifty-two, whereby the administration and conduct of the affairs of the said bank will be restored to the stockholders thereof, and if such notification shall not take place until after the adjournment of the General Assembly the appointment of the directors of the ensuing year shall be made by the Governor alone, and all vacancies occurring during the recess of the senate shall be filled by the Governor. The first election of presi-

dent shall take place as soon as the board of directors is organized under this act.

SEC. 5. Be it further enacted, &c., That as soon as the Governor has appointed the said State directors the board of bank managers created by the act entitled "An act to protect the State against loss on account of its liabilities for bonds issued for the use of the property banks," approved the sixth April, eighteen hundred and forty-seven, shall cease to exist, but all the provisions of the said act shall remain in full force and the rights and powers of the said board of bank managers shall continue to be exercised by the State directors, so far as the same are applicable to the Consolidated Association and are not inconsistent with the provisions of this act.

Approved April 11th, 1853.

342 No. 193.

An act to provide for the liquidation of the Consolidated Association of the Planters of Louisiana.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That the Consolidated Association of the Planters of Louisiana be, and are hereby, authorized to invest their assets at a discount of eight per cent. per annum on all loans having more than ninety days to run.

SEC. 2. Be it further enacted, &c., That the third section of an act entitled "An act to provide for the future management of the affairs of the Consolidated Association of the Planters of Louisiana," approved April the eleventh, eighteen hundred and fifty-three, and which reads as follows, to wit:

SEC. 3. Be it further enacted, &c., "That the president of said association shall be paid by said association, in quarterly payments, an annual salary of seven hundred dollars, and each of the State directors an annual salary of four hundred dollars, payable in like manner," be, and the same is hereby, repealed.

Approved March 15th, 1855.

No. 38.

An act providing for the final liquidation of the Consolidated Association of the Planters of Louisiana.

343 Whereas during the late war this institution and its stockholders have suffered such heavy losses that further delay must be granted for its final liquidation: Therefore—

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That the managers and directors of the Consolidated Association of the Planters of Louisiana be, and they are hereby, authorized to negotiate the postponement of the payment of the State bonds and coupons in favor of this bank, on the same terms as now exist, for a period of ten years and no more: Provided, however, That the stockholders shall be at liberty to discharge those bonds sooner, and the

liquidation of the bank may be continued until the maturity of the payment of the bonds and coupons thus extended.

SEC. 2. Be it further enacted, &c., That an act entitled "An act to protect the State against loss on account of its liability for bonds issued for the use of the property banks," approved sixth April, eighteen hundred and forty-seven, and all other acts amendatory thereto, and under which acts this bank is fully organized, shall remain in full force in order to carry out the object of the present act.

SEC. 3. Be it further enacted, &c., That it shall be the duty of the managers and directors to require all stockholders and debtors to furnish mortgages on property of sufficient value and other undoubted security in order to be able to redeem at the proper
344 time the State bonds and coupons remaining due and all interest arising from the extension of time.

SEC. 4. Be it further enacted, &c., That the said board of managers and directors are hereby vested with full power to regulate all transactions and contracts with the stockholders and other debtors of this bank, so as to accelerate the liquidation and beyond a doubt provide for the redemption of the State bonds and coupons.

Approved February 26, 1866.

No. 20.

An act to provide for the further liquidation of the Consolidated Association of the Planters of Louisiana; to provide additional functions and duties for the president and directors thereof under act No. 113 of 1853; to authorize and direct legal proceedings by said president and directors; to impose certain additional duties upon the board of liquidation and the auditor of public accounts, and to give to the State three directors in addition to those provided by act No. 113 of 1853.

Whereas there remains outstanding a large amount of bonds of the State of Louisiana issued in aid of the Consolidated Association of the Planters of Louisiana under the provisions of an act entitled "An act to amend the act entitled 'An act to incorporate the subscribers to the Consolidated Association of the Planters of
345 Louisiana,'" approved February 19, 1828; and

Whereas by the provisions of said act it was declared that the stock, mortgages, and all other hypothecary obligations of said corporation should serve as security and special guarantee for the reimbursement of said bonds and the interest thereof; and

Whereas the State subsequently entered into possession of her pledge through the agency of liquidators provided by her laws, and by the provisions of an act entitled "An act to facilitate the liquidation of the property banks chartered by the State, approved April 5, 1843, did declare that the assets of the Consolidated Association of the planters of Louisiana" are and shall remain in the possession and under the exclusive management of the State of

Louisiana until the final payment of all the State bonds issued in its favor; and

Whereas under the provisions of act No. 113 of 1853 the president and board of directors constituted in accordance therewith are and remain the sole lawful liquidators of said corporation, representing both the corporation and the State, and are entitled to the possession and exclusive management of the assets and affairs of said corporation; and

Whereas, owing to neglect of duty and other unauthorized acts of late officers of the State, the possession and management of the assets and affairs of said corporation have been taken and are now withheld from the possession of said lawful liquidators, and are held by receivers under orders of the honorable the circuit court of the
346 United States to the prejudice of the legal rights of the State: Therefore

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly conveyed, That the honorable the judges of the circuit court of the United States for this district and circuit be, and they are hereby, respectfully requested to cancel and rescind the orders appointing receivers for this corporation and to restore its assets and affairs to the control and possession of the president and directors, as at present organized under the act No. 113 of 1853, which is declared to continue in force, except that the Governor shall be authorized to appoint as directors three directors on behalf of the State, in addition to those provided by the said act No. 113 of 1853, none of whom shall be stockholders in said association or the agent or representative of a stockholder.

SEC. 2. Be it further enacted, &c., That said president and directors be, and are hereby, directed to take such legal proceedings as may be necessary to procure the rescinding of all orders of court appointing receivers for this corporation and to recover possession and control of its assets and affairs.

SEC. 3. Be it further enacted, &c., That in case it shall be decided by the supreme court of the State that the bonds of the State issued in aid of this corporation are legal and valid obligations of the State, and properly fundable, it shall be the duty of the board of liquidation, upon receiving the same in exchange for consolidated bonds, instead of cancelling and destroying them, as provided in the case of
347 other bonds, to preserve the same, after stamping or printing upon them such statement as to show that the obligation of the State thereon has been extinguished, and to turn them over to the auditor of public accounts on his official receipt, to be preserved as evidence of the obligation of the corporation to the State.

SEC. 4 Be it further enacted, &c., That it shall be the duty of the auditor of public accounts to open upon his books an account with the Consolidated Association of the Planters of Louisiana, wherein he shall charge the same association with the amount of all consolidated bonds issued in exchange for aforesaid bonds, and with the interest thereon as it shall accrue, and shall credit the association with amount of all consolidated bonds surrendered to the State

by it for cancellation, as hereinafter provided, and with all moneys paid in by it to meet interest as it shall accrue.

SEC. 5. Be it further enacted, &c., That it shall be the duty of the president and directors of said association, as soon as they shall be restored to possession, to convert into cash all the assets, corporeal and incorporeal, of said association (except the stock mortgages hereinafter provided for) in the most speedy and effectual manner, disposing of the same on such terms of credit and settling with debtors on such safe and secure terms as they may deem most advantageous to said corporation, and as fast as funds are realized from said assets (over and above necessary expenses of liquidation) they shall invest the same in consolidated bonds of the State, which investment shall be made after notice published during ten
348 days in the official journal of the State inviting bids, and the bonds offered at the lowest price on such bidding shall be purchased.

SEC. 6. Be it further enacted, &c., That it shall be the duty of the said president and directors, as soon as practicable, to make or cause to be made an investigation of the mortgage given to secure the subscriptions to the capital stock of said association, and ascertain therefrom, first, the number of shares of stock outstanding and the amount due thereon; second, the respective owners of said stock or of the property on which rests the mortgage whereby the same are secured, and, third, the value of the various properties liable for said shares of stock, respectively, and it shall then be the duty of the said president and directors to form a careful estimate of the amount which will be necessary to pay, prior to the date of its semi-annual maturity, the amount of interest which the State will be called on to pay during the current year upon the consolidated bonds charged or to be charged to the association, as provided in section four of this act, and also of the amount which will be necessary to purchase and surrender to the State, on or before the first of January of the ensuing year, one-tenth of the total amount of consolidated bonds, which may be charged as aforesaid at the date of said payment, and the said president and directors are authorized and required, after making said investigation and estimates, to levy and call in an assessment upon each share of stock and to require such periodical payment thereof as may be sufficient and timely to pay the interest for the current year and to purchase
349 the proportion of outstanding bonds estimated as aforesaid, and said assessment shall be equal and uniform upon each share of responsible stock: Provided, however, That the president and directors may discard from consideration any shares of stock which are valueless by reason of having no real or personal security.

SEC. 7. Be it further enacted, &c., That prior to the first Monday of April of every year subsequent to 1877 it shall be the duty of said president and directors to cause similar investigations and estimates to be made, and at a meeting to be held on said first Monday of April, or at such subsequent day as may be fixed by the president in case the meeting on that day shall for any reason not be held, to

levy and call in an assessment similar to the one provided in the foregoing section for the purpose of paying punctually the interest accruing during the then current year and also of purchasing and surrendering to the State the like amount of outstanding bonds, it being the purpose and object of this act to require the president and directors to levy and collect annually such assessment as (after paying expenses of liquidation) will provide for the punctual payment of the annual interest and will extinguish the whole amount of consolidated bonds issued for account of this association within ten years from the first day of January, 1878.

SEC. 8. Be it further enacted, etc., That any stockholder or owner of property subject to stock mortgage who shall fail to pay punctually the assessments levied under the provisions of this act
350 shall forfeit the benefit of the delays granted hereby, and the president and directors, in their discretion, shall have the right, after due demand and delay of thirty days, to sue forthwith for personal judgment as well as to enforce the stock mortgage for the whole amount of said stock, and the amount recovered and collected on such suit shall be held by said president and directors as a fund from which to pay all assessments due or which may thereafter become due on said stock.

SEC. 9. Be it further enacted, etc., That the amount realized from the assessment of each year, after paying expenses of liquidation, shall be first applied to the payment of currect interest and the residue applied to the purchase of bonds: Provided, That any excess of bonds purchased over the proportion required for any year shall be credited on the assessments for the following year, and any deficit shall be made up in the assessment for the said following year.

SEC. 10. Be it further enacted, etc., That it shall be the duty of the auditor of public accounts, as fast as consolidated bonds are surrendered to him by the said association, under the provisions of this act, after they are credited properly to the account of said association, to cancel and destroy the same after public notice in the official journal in the presence of as many citizens as may desire to be present, and to publish a process verbal thereof and to make report thereof in his annual report to the General Assembly.

SEC. 11. Be it further enacted, etc., That if the stockholders of the Consolidated Association of the Planters of Louisiana
351 shall fail to elect directors, as provided by act No. 113 of 1853, the directors appointed by the Governor on behalf of the State shall be, and are hereby, authorized to exercise all the powers and perform all the functions conferred and imposed on said president and directors by the provisions of this or any law until said directors are elected.

SEC. 12. Be it further enacted, etc., That it shall be the duty of the president and directors to furnish to the Governor, before the first day of January of each year, for communication to the General Assembly of the State, a full report of their proceedings during the year.

SEC. 13. Be it further enacted, etc., That the liquidation of the Consolidated Association may continue until the payment of all the

obligations of the State incurred on account thereof, reserving the right of the State, in case of failure on the part of the corporation, to provide for payment of interest and annual extinction of part of the principal of said bonds, as contemplated by this act, to make such other and further regulations for the liquidation as may hereafter be deemed proper.

SEC. 14. Be it further enacted, etc., That, in case it shall be decided by the supreme court of the State that the bonds of the State issued in aid of this corporation, though legal and valid obligations, are not fundable until after the liquidation of said corporation, the said liquidation shall nevertheless be conducted by the president and directors of said corporation, as organized under the act No.
352 113 of 1853, and they shall take all necessary legal proceedings to take and recover possession of the assets and affairs of the corporation, and they shall perform the duties imposed upon them by the terms of the fifth section of this act in manner and form as therein directed, except that the investment shall be made in the outstanding bonds of the State instead of in consolidated bonds; and the said president and directors, after making the investigations prescribed by section six of this act, shall digest and prepare a plan for the further liquidation of this corporation, to be included in the report prescribed by section thirteen of this act, in order that the Legislature of the State, at its next session, may adopt laws for the further and final liquidation of the corporation.

SEC. 15. Be it further enacted, etc., That no delay shall be granted any stockholder under the previous provisions of this act until the stockholder desiring to avail himself of it shall have, by authentic act, acknowledged all his obligations to the State; that nothing herein shall in any way, either directly or indirectly, be held to constitute a contract so as to deprive the State of creating, by future laws, such additional machinery or remedies as may be deemed necessary.

SEC. 16. Be it further enacted, etc., That this act shall take effect from and after its passage, and that all laws and parts of laws in conflict with this act be, and are hereby, repealed to the extent of such conflict.

Approved March 30, 1878.

353 No. 78.

An act relative to the Consolidated Association of the Planters of Louisiana to amend act No. 20, approved March 30, 1878; to enable said association to settle with its stockholders; to enable said stockholders to free themselves and their real estate from said stock and mortgages, and to confer upon the president and directors certain duties and powers in reference to said settlements.

Whereas it has been decided by the supreme court of this State that the bonds issued by the State in aid of the Consolidated Association of the Planters of Louisiana are valid obligations of the State

and entitled to be exchanged for consolidated bonds of the State under the funding act of 1874; and

Whereas very nearly all of said bonds have been actually funded in consolidated bonds of this State under the provisions of said funding act of 1874; and

Whereas suits have been brought against various stockholders of said association, who have combined to resist the demands against them; and

Whereas many stockholders would prefer settling at once their share of indebtedness, based upon the actual condition of said association, and that nothing more can fairly be demanded of them; and

Whereas the protracted liquidation of said association for more than a quarter of a century and the very remote prospect of its termination, and the very heavy expenses consequent thereon, cause great damage to the State and to the unfortunate stockholders,
354 practically taking their property out of commerce, and that it is to the evident advantage of all that the affairs of this association be speedily wound up, the State reimbursed its bonds, and the properties released from this mortgage—

Be it enacted by the General Assembly of the State of Louisiana:

SECTION 1. That the Consolidated Association of the Planters of Louisiana is hereby empowered to settle the liability of its stockholders at once, said settlement to be made by the association and to be approved by the directors on the part of the State in the manner hereinafter provided.

SEC. 2. Be it further enacted, etc., That it shall be the duty of the president and directors of said association, immediately after the passage of this act, to make an investigation of the condition of said association and ascertain therefrom—

1st. The total amount and value of all its assets and properties.

2d. The number of shares of stock outstanding, the respective owners of said stock, the amount due on each share, and the amount due by each stockholder, the properties on which rest the stock and mortgages, and the value of said properties.

3d. The amount of bonds issued by the State in aid of said association and outstanding, the amount of said bonds funded under the act of 1874, the amount of interest thereon matured or paid by the State, and the total amount of indebtedness of said association due or to become due during this year: Provided, That in mak-
355 ing this estimate any shares of stock which, by reason of the insufficiency in value of the property mortgaged, are of little or no value shall be deducted or not counted at all.

SEC. 3. Be it further enacted, etc., That immediately after making said investigation and estimate it shall be the duty of the president and directors of said association to calculate the assessment upon each share of stock which would be necessary to pay off the whole indebtedness of said association at once, which assessment shall be equal and uniform upon each share. Immediately after this assessment is thus ascertained it shall be the duty of the president and directors to publish once a week for thirty days, in a newspaper in every parish in which is situated any property mortgaged to the

association, public notice that they are prepared to settle the debt of its stockholders on payment of the assessment against each share, as is herein provided, and each stockholder is hereby authorized to pay to said association the assessment thus charged against him; this payment is hereby authorized to be made *in*, viz:

1st. In bonds of the State issued under the funding act of 1874 and under the State constitution of 1879 for the share accruing to the State in reimbursement of the principal of bonds issued by it under the funding act of 1874 in exchange for bonds originally issued for the benefit of the Consolidated Association.

2d. In current funds for outstanding bonds originally issued by the State to the Consolidated Association.

For interest due and to become due to the State on bonds issued under the funding act of 1874 in exchange for bonds orig-
356 inally loaned to the Consolidated Association.

To defray the expenses of liquidation.

In payment of notes held by the Consolidated Association for loans to stockholders, and after the payment and settlement shall have been made it shall be the duty of the president to authorize, and the recorder of mortgages of each parish to make, on the certificate of the president, the cancellation of the stock.

SEC. 4. Be it further enacted, etc., That it shall be the duty of the president and directors yearly hereafter, in the month of January, to make like condition and statement of the affairs of the association, and to ascertain the amount of assessment necessary to pay the debts of the association according to its standing at the time of said statement, and to make publication of the assessment then required, and to proceed as hereinbefore prescribed.

SEC. 5. Be it further enacted, etc., That each stockholder is hereby empowered to enforce the provisions of this act in the courts of the State, by mandamus or otherwise, and to settle with the association under judgment of the court according to the terms and spirit of this act.

SEC. 6. Be it further enacted, etc., That nothing herein contained shall be construed as obligatory or compulsory on the stockholders, nor as suspending any suit or proceeding against them, but no judgment shall be executed against any stockholder until the expiration of the thirty days' public notice announcing the assessment
357 for the settlement, and any and all suits and judgments against any stockholder shall be annulled and set aside, and all inscriptions thereof in the mortgage office cancelled after said stockholders shall have settled their indebtedness as herein provided: Provided, That in all cases it shall be discretionary with the president and directors to grant additional reasonable time to any stockholder to take advantage of the provisions of this act upon his making a written declaration of his desire and intention so to do.

SEC. 7. Be it further enacted, etc., That in all things not contrary to the provisions of this act and not otherwise herein provided for the liquidation of said association shall be governed by the provisions of act No. 20 of 1878.

SEC. 8. Be it further enacted, etc., That all laws in conflict with

the present act are hereby repealed, and that this act shall take effect from and after its passage.

R. N. OGDEN,
Speaker of the House of Representatives.
GEO. L. WALTON,
President pro tem. of the Senate.

Approved July 5, 1882.

S. D. McENERY,
Governor of the State of Louisiana.

A true copy.

WILL. A. STRONG,
Secretary of State.

358 *Extracts from the Journal of the House of Representatives and Senate of the State of Louisiana for the year* 1847, *Offered in Evidence by Both Parties.*

MONDAY, *February* 23*rd*, 1846.

The president submitted the following report and statement from the managers of the Consolidated Association of the Planters of Louisiana, which was read:

CONSOLIDATED ASSOCIATION OF THE
PLANTERS OF LOUISIANA,
NEW ORLEANS, 19 *February*, 1846.

To the Honorable Trasimond Landry, lieutenant governor and president of the senate.

SIR: The managers appointed by the State for the liquidation of the Consolidated Association of the Planters of Louisiana beg leave to submit to the honorable body *upon* which you preside a comparative statement of the affairs of the bank on the 21st April, 1843, the day that a general report was made to the ex-Governor, and on the 14th instant, by which you will perceive that the whole liabilities of the bank have decreased $735,356.28, while its assets present only a diminution of $688,355.25, showing an improvement in the affairs of the bank of $47,001.03 during that time.

It is to be observed that, although the statement shows a surplus of the assets over the liabilities of $39,060.69, there will be finally
359 a considerable loss on the protested paper and other doubtful claims, which now appear in full to the credit of the bank, and which, at the final liquidation of the institution, will create a deficit quite impossible to ascertain at the present time.

By statement No. 2 you will perceive that the liabilities of the State for this institution have decreased during the same period in the sum of $557,745.37, including the coupons of interest due on the bonds.

The whole of which is respectfully submitted.

I remain, sir, your most obedient and humble servant,

(Signed) H. GALLY, *President.*

STATEMENT No. 1.

Comparative Statement of the Affairs of the Consolidated Association of the Planters of Louisiana on the 21st April, 1843, and on the 18th February, 1846.

	Assets of the bank 21st April, 1843.	18th Feb., 1846.
Notes and bills discounted	$381,878 75	$70,331 96
Stock loans	1,178,981 27	987,186 99
Loans on mortgage	67,363 51	28,915 74
Real estate	131,244 69	108,349 69
Notes and bills discounted:		
Protested	406,289 60	455,741 76
Due by the State of Louisiana	235,072 65	79,878 46
Amount carried forward	$2,400,830 47	$1,730,404 60
360 Amount brought forward	2,400,830 47	1,730,404 60
Bills receivable	245,909 82	195,173 12
Bank stock and sundry claims	61,950 10	94,002 98
Due by bankers	860 33	
Specie on hand	3,371 67	4,986 44
Amount of the assets at the above-mentioned dates	2,712,922 39	2,024,567 14
Amount of the liabilities at the same date	2,720,862 73	1,985,506 45
Excess of liabilities over assets 21st April, 1843	7,940 34	
Excess of assets over liabilities 18th February, 1846		39,060 69

	Liabilities of the bank 21st April, 1843.	18th Feb., 1846.
Louisiana State bonds due in 1843	$763,000 00	$570,000 00
Louisiana State bonds due in 1848	1,617,000 00	1,175,000 00
Amount of coupons of interest on bonds	117,495 37	194,750 00
Notes in circulation	157,570 00	20,405 00
Individual deposits	37,265 58	7,466 45
Bills payable	22,085 00	17,885 00
Due local banks	4,349 58	
Due foreign bankers	2,097 20	
	$2,720,862 73	$1,985,506 45

361 Consolidated Association of the Planters of Louisiana, New Orleans, 19th February, 1846.
(Signed) G. MILTENBERGER, *Cashier.*

STATEMENT No. 2.

Comparative Statement of the Liabilities of the State of Louisiana for the Consolidated Association of the Planters of Louisiana on the 21st April, 1843, and on the 18th February, 1846.

	21st April, 1843.	18th Feb., 1846.
Louisiana State bonds due in 1843	$763,000 00	$570,000 00
Louisiana State bonds due in 1848	1,617,000 00	1,175,000 00
Interest due on Louisiana State bonds	117,495 37	194,750 00
Liabilities at the above-mentioned dates	2,497,495 37	1,939,750 00
Diminution in the liabilities of the State for the bank		557,745 37

Consolidated Association of the Planters of Louisiana, New Orleans, 19th February, 1846.

(Signed) G. MILTENBERGER, *Cashier.*

362 *Extracts from the Journal of the House of Representatives and Senate of Louisiana for the year* 1847, *Offered in Evidence by Both Parties.*

WEDNESDAY, 20*th May*, 1846.

It being now eleven o'clock,

On motion of Mr Soulé, the bill entitled

"An act to protect the State from loss on account of its liabilities for bonds issued for the use of the property banks"

Was reconsidered.

Mr. Soulé moved to amend section 3rd of said bill, which is as follows:

SEC. 3. Be it further enacted, &c., That it shall be the duty of the presidents of the board of managers of the Citizens' Bank of Louisiana and of the Consolidated Association of the Planters of Louisiana, immediately after the promulgation of this act, to call a meeting of their stockholders at the banking-houses of the said institutions, respectively, for the purpose of electing three directors for each from among themselves, and said election shall take place at least 15 days after said notice shall have been given in two newspapers published in this city, in English and French, and hereafter the said elections shall be held on the first Monday in February in each year, and each and every stockholder shall be entitled to vote at said election as contemplated by their original charter; that the said directors, with the managers herein provided for, shall have power to manage and to do all things necessary and proper to the liquidation
363 of the said banks, respectively, not inconsistent with this act and existing laws: Provided, however, That no act of the directors shall have any validity or force until it shall have received the sanction of two of the managers representing the State.

By striking out all after the words "validity or force," in the 19th line, and inserting in their stead these words: "In case it should be

opposed by three of the managers appointed by the State, nor unless assented to by one of said managers."

On the adoption of this amendment, the ayes and nays being called for, it appeared that

Messrs. Adams, Allen, Bell, Brashear, Briant, Caulfield, Duanoy, Dial, Durant, Dupré, Felix Garcia, Garcia of Jefferson, Kenner, Mayo, McWhorter, Parham, Cook, Scott, Soulé, Strickland, and Maunsel White voted in the negative—21 ayes.

And that Messrs. Couvillion, Farmer, Porche, Porter, Richardson, and Taylor voted in the negative—6 nays.

Consequently, said amendment was adopted.

On motion, section 3rd was adopted as amended.

Mr. Soulé moved to amend section 4th, which is as follows:

SEC. 4. Be it further enacted, &c., That the managers and directors of the Consolidated Association be, and they are hereby, authorized to extend, by endorsement or otherwise, the bonds of the State in favor of that bank 2, 4, 6, 8, 10, 12, and 14 years, and that the managers and directors of the Citizens' Bank be, and they are hereby authorized to extend the bonds of the State in favor of that
364 bank, due in 1850, by endorsement or otherwise, 1, 2, 3, 4, and 5 years.

By striking out, in the 4th and 5th lines, the figures "2, 4, 6, 8, 10, 12, 14" and inserting in their stead the figures "3, 6, 9, 12, 15, 18."

Also by inserting after the word "years," in the 5th line, these words: "Provided, however, the stockholders shall be at liberty to discharge those bonds sooner, and the liquidation of the banks may be continued until the maturity and the payment of the bonds thus extended."

And also by adding at the end of said section these words: "Provided, That the extension shall not be made with a rate of interest higher than the bonds now bear."

On the adoption of the above amendments, the ayes and nays being called for, it appeared that

Messrs. Adams, Allen, Bell, Brashear, Briant, Duanoy, Dial, Durant, Dupré, Felix Garcia, Garcia of Jefferson, Kenner, Mayo, McWhorter, Parham, Cook, Scott, Soulé, and Maunsel White voted in the affirmative—19 ayes.

And that Messrs. Caulfield, Couvillion, Farmer, Porche, Porter, Richardson, Strickland, and Taylor voted in the negative—8 nays.

Said amendments were adopted.

On motion, said section was adopted as amended.

365 *Extract from Report of Board of Currency.*

FRIDAY, *January* 29, 1847.

We transmit to your honorable body copies of letters from Messrs. Purton & Forstall, agents of Messrs. Barring, Brothers & Co., of London, in which those agents complained that, by the statement of the Consolidated Association, the liability of the State and the debt of the bank were made to appear less than they really were,

inasmuch as the bank omitted to mention a certain amount of interest justly due to said Baring, Brothers & Co.; wherefore said agents requested the board of currency to use their authority over that institution with a view of correcting the errors contained in her statement.

We also transmit to your honorable body a copy of the answer made by the cashier of that bank to the communication of Messrs. Purton & Forstall. The board of currency came to no decision on the subject, the parties having mutually agreed to postpone the consideration of the same. There the matter rests.

We regret to inform your honorable body that the situation of the Citizens' Bank and of the Consolidated Association is far from being satisfactory, as you will see per statements annexed. Coupons of interest, given by the State on behalf of the Citizens' Bank, have been protested for non-payment, and amounted, on the 1st of August last, to $759,615.51. On the 1st of February next other coupons of the same nature, and amounting to $162,000, will probably be protested, making a total of $921,615 for which the State is held responsible. With regard to the Consolidated Association she owes, according to her statements, for bonds of this State issued in
366 her favor and due since the 30th of June, 1843, the sum of $552,000, to which must be added $218,325 of interest on State bonds now outstanding; total, 770,325. Your honorable assembly will therefore perceive that the liabilities of the State in behalf of said institution amount for the present to $1,691,940.51.

Considering that these two banks will not be able for a long time to come to pay such considerable sums nor any part thereof on account of the accruing instalments and of the running interests which they will have to meet, and considering that, in consequence of the inability of said institution to fulfil their engagements, the State will remain exposed to the demands of their creditors, the board of currency have deemed it their duty, by authority of the 2d section of the act entitled "An act to revive the charters of the several banks located in the city of New Orleans, and for other purposes," approved February 5th, 1842, to call, as soon as practicable, a meeting of the proprietors or stockholders of both said banks and to invite them to take cognizance of their affairs, and to provide or to suggest the means of providing, if possible, for the pecuniary emergencies above stated.

The board of currency will lay before the Legislature copies of the proceedings of the meeting of said stockholders. In the meantime the present report of the board of currency is respectfully submitted to the consideration of your honorable assembly.

CHARLES GAYARRE,
Secretary of State.
JOSEPH WALKER,
State Treasurer.

367 *Copy of a Letter Received of Mr. M. Purton, Agent of Baring Brothers & Co., of London.*

NEW ORLEANS, *6th June*, 1846.

To the board of currency.

GENTLEMEN: Having reason to believe that the monthly statements presented to your board by the Consolidated Association are incorrect in a very important particular and have been thus incorrectly presented for many months past, I consider it my duty to bring the matter before you in hopes that measures may be taken to cause correct returns to be made in future.

By those statements the liability of the State and the debt of the bank are made to appear less, to a considerable amount, than they really are, which arises from the circumstance of the board of managers conceiving, I presume, very erroneously, that the holders of the State bonds issued in favor of the association which matured on the 30th June, 1843, are not entitled to interest on the same since that date, simply from the fact that no dividend coupons are attached to those bonds for a period subsequent to maturity.

The amount of bonds matured as above and thus remaining unpaid was represented at the opening of the present session of the Legislature to be $575,000, the interest upon which since the 30th June, 1843, would make the liability of the State and the debt of the bank greater by $80,000 than represented by the managers of the latter in their monthly statements to your board.

368 I presume the reason why no coupons were attached to the bonds for a later period than the maturity of the bonds themselves was that insolvency was not contemplated at the time of their issue, the face of the bonds representing them as bearing interest at the rate of five per cent. per annum until paid and a period fixed for their redemption. Understanding further that upon the plea before stated that managers of the Consolidated Association have passed a resolution at their board not to allow interest on the bonds for the time which has elapsed since their maturity on the 30th June, 1843, I herewith enter my protest on behalf of the bondholders generally against this act of injustice and claim your intervention in favor of their just rights.

I have the honor to be, gentlemen, your obedient servant,

(Signed) M. PURTON,

Agent for Baring Brothers & Co., London.

The board, having furnished the Consolidated Association with a copy of the above letter, received of G. Miltenbergar, cashier, the following letter:

NEW ORLEANS, *24th June*, 1846.

Messrs. Charles Gayarré, secretary of state; Joseph Walker, State treasurer, members of the board of currency.

SIRS: In reply to your letter of the 8th inst., which I have had the honor to receive, I am instructed by the board of managers to say that, before entering on the discussion of the very important

matter referred to in Mr. Purton's letter, they would be very desirous to see the powers under which that gentleman has
369 made his protest and acts for and on behalf of the holders of the bonds issued by the State in favor of this institution. Perhaps the board of currency will please to require the exhibition of these powers before going further into this matter.

I have the honor to remain, sirs, your most obedient servant,

(Signed) G. MILTENBERGER, *Cashier.*

Copy of the above letter was furnished Mr. Purton.

Copy of a Letter Received of Mr. E. J. Forstall, Agent of the Baring Brothers & Co., London.

NEW ORLEANS, 27*th June*, 1846.

To the board of currency.

GENTLEMEN: Please accept my thanks for copy of letter to you from the cashier of the Consolidated Association of the Planters of Louisiana, bearing date 24th inst., wherein said cashier thus expresses himself:

"I am instructed by the board of managers to say that, before entering on the discussion of the very important matter referred to in Mr. Purton's letter, they would be very desirous to see the powers under which that gentleman has made his protest and acts for and in behalf of the holders of the bonds issued by the State in favor of this institution. Perhaps the board of currency will please to require the exhibition of the powers before going further into the matter."

370 Although you have not deemed it necessary to require of me the exhibition of the powers of Messrs. Baring Brothers & Co. to act on behalf of the bondholders, as demanded by the State managers, who by law are placed under your direction, still, in order at once to render all discussion on that head unnecessary, I beg to inform you that Messrs. Baring Brothers & Co. have placed in my hands bonds of the State in favor of the Consolidated Association, matured 30th June, 1843, which bonds I am ready to exhibit to you. This, I trust, is such authority as cannot be put in question by the State managers of the Consolidated Association; and allow me a few observations.

The State managers, by their answer to you of the 24th inst., above quoted, tacitly admit that the interests on the bonds due 30th June, 1843, had not been entered in the statements furnished your board. You have, therefore, before you the fact that the State managers, who by law are placed under your direction, repudiate *in toto* the interests due on the bonds issued by the State in favor of the Consolidated Association from and after their maturity, say 30th June, 1843.

Against such repudiation I deem it my duty most solemnly to protest in behalf of Messrs. Baring Brothers & Co., whose bonds I hold and am ready to exhibit. The bonds in question were issued by virtue of an act approved 19th February, 1828, entitled "An act

to amend the act entitled An act to incorporate the subscribers of the Consolidated Association of the Planters of Louisiana."

371 Sec. 4 provides the emission of $2,500,000 of State bonds.

Sec. 5 provides payment of interests and reimbursement of principal at such place as may be named in the endorsement.

Sec. 6 is as follows: That the bonds, with privileged mortgage, for the sum of three millions of dollars, subscribed by the stockholders of the said Consolidated Association in order to guarantee the loan of two millions five hundred thousand dollars, shall be deposited in the office of said institution for safe keeping and as a guarantee for the reimbursement of the principal and interest of the bonds given by the State, and, moreover, all the hypothecary obligations of whatever nature subscribed by individuals in favor of said Consolidated Association shall send as special guarantee and security for the reimbursement of said capital of two millions five hundred thousand dollars and the interest thereof, and shall for that purpose be deposited in the office of said institution, inasmuch as the said Consolidated Association is bound for the reimbursement of said bonds subscribed by the State, at their respective instalments, and to pay the semi-annual interest until the whole amount of the principal is reimbursed.

The tenor of the bonds issued by virtue of said act is as follows:

"One thousand dollars.

"Know all men by these presents that the State of Louisiana acknowledges to be indebted unto the president, directors, and company of the Consolidated Association of the Planters of

372 Louisana in the sum of one thousand dollars, which sum the said State of Louisiana promises to pay, in current money of the United States, to the order of the said president, directors, and company on the thirteenth day of June, in the year one thousand eight hundred and forty-three, with interest at the rate of five per cent. per annum, payable half-yearly at the place named in the endorsement hereof, viz., on the thirteenth day of June and thirty-first of December of every year until payment of said principal sum.

"In testimony whereof the Governor of the State of Louisiana has signed and the treasurer of said State has countersigned these presents and caused the seal of the State to be affixed thereto, at New Orleans, the thirty-first day of December, in the year of our Lord one thousand eight hundred and twenty-eight.

"(Signed) P. DERBIGNY, *Gov.*

"(Countersigned) F. GARDERE, *Treasurer.*"

Whereby it is seen—

1st. That the State has bound itself to pay interest at the place named in the endorsement at the rate of 5 per cent. per annum until payment of said principal sum.

2d. That the Consolidated Association (see 6 sect. above) has bound itself punctually to pay the interests on said bonds until the whole amount of the principal is reimbursed.

3d. That the whole of the bonds, with privileged mortgage, for the sum of $3,000,000, subscribed by the stockholders of said Consolidated Association in order to guarantee the loan of $25,000,000, have been deposited in the office of the Consolidated Association for safe keeping and as guarantee for the reimbursement of
373 the principal and interests of the bonds given by the State, and, moreover, all the hypothecary obligations of whatever nature, &c., &c. (See sec. 6.) It was under this act and the guarantee above enumerated that Messrs. Baring Brothers & Co., some time in 1828, became the contractors for a large portion of the bonds in question. Of these bonds, amounting originally to $2,500,000, about $570,000 remain unpaid, although due since 30th June, 1843. No part of the securities enumerated in the 6th section, above cited, can be legally diverted for any other purpose until the whole of the above bonds be redeemed without a breach of the law of 19 February, 1828, under which such bonds have been issued and contracted for. All subsequent laws authorizing new issues of bonds on the guarantee of the same securities contemplated in the 6th section of said act can only be considered and take effect legally as a second mortgage, and I trust you will see the equity and justice of the assumption. In conclusion, I beg to state that it is not the wish of Messrs. Baring Brothers & Co., for themselves or the bondholders they represent, to throw any difficulty in the way of a just and equitable adjustment of the affairs of the Consolidated Association. They have, on the contrary, on every occasion, evinced every disposition to grant that institution every facility it might require honorably to meet its debts, as proved by their cash advances, to save the institution from protest in 1843, and their several communications to the Legislature and to our present executive; but when repudiation is contemplated by State managers appointed for the protection of the State,
374 and consequently of the bondholders, to remain silent would be on their part a dereliction of duty as original contractors of the bonds in question.

I am, gentlemen, your obedient servant,

E. J. FORSTALL,
For BARING, BROTHERS & CO.

OFFICE BOARD OF CURRENCY.

A true copy of the original.

A. LEGENDER, *Secretary.*

Copy of the above letter was furnished to the Consolidated Association Bank.

By consent of the parties that affair has been postponed until further consideration.

Comparative Statement of the Affairs of the Consolidated Association Bank for the Return Made to the Board of Currency.

Dead weights.	Dates.		
	31st Jan'y, 1846.	25th July, '46.	16th Dec., '46.
Capital of the branches			
Real estate	108,449 69	108,349 69	18,448 22
Am't carried forward	108,449 69	108,349 69	18,448 22
375 Am't brought forward	108,449 69	108,349 69	18,448 22
Loans on stock	988,186 96	986,118 05	942,305 48
Other loans not due within 90 days	100,609 20	76,846 64	69,137 75
Other assets do. do.	376,916 58	357,330 36	385,259 21
Protested paper	453,086 48	458,788 41	434,238 26
Total	2,027,148 94	1,969,433 15	1,849,388 92
Deduct liabilities other than movement	1,217,855	1,124,885	1,099,000
Balance of dead weight	809,263 94	844,548 15	750,388 92
Movement.			
Assets:			
Specie	16,677 23	5,496 28	10,812 45
Short paper			
Exchange and other assets			
Total	16,677 23	5,496 28	10,812 45
Liabilities:			
Circulation	789,720	782,365	759,150
Deposits	7,466 45	6,835 33	7,576 88
Other cash liabilities			
Total	797,186 45	789,200 33	766,726 88
Excess of assets over liabilities			
Deficiency of do.	780,509 22	783,704 05	755,914 43
Total of dead weight and movement:			
Assets	2,043,826 17	1,974,929 43	1,860,201 37
Liabilities	2 015,071 45	1,914,085 33	1,865,726 88
Balance of assets	28,754 72	60,844 10	
Deficiency of do			5,525 51

Office board of currency, New Orleans, 15th January, 1847.

(Signed) CHARLES GAYARRE,
Secretary of State.

(Signed) JOSEPH WALKER,
State Treasurer.

376 *Statement of the Consolidated Association of the Planters of Louisiana Furnished to the Board of Currency.*

Amount paid by the stockholders of the Consolidated Association on their stock loans from the 12th November, 1842, when the bank went into liquidation, to this date (2d January, 1847)		$273,441 18
Amount of the Louisiana State bonds due in 1843, paid during the same period	$211,000	
Amount of the Louisiana State bonds due in 1848, paid during the same period	526,000	
Amount of coupons of interest on bonds during the same period	122,175	
		859,175 00
Amount of the bonds of the State issued in favor of this institution now outstanding		1,643,000 00
Of which $552,000 are due since the 30th June, 1843; $1,091,000 fall due on the 30th June, 1848.		
Amount of coupons of interest on State bonds now outstanding		218,325 00
The annual receipts during the same period amount to an average of about		300,000 00
Expenses of the bank per annum now reduced to		7,400 00

E. & O. E.

Consolidated Association of the Planters of La., New Orleans, 2d January, 1847.

(Signed) G. MILTENBERGER, *Cashier.*

377 A true copy of the original.

A. LEGENDRE, *Secretary.*

OFFICE OF BOARD OF CURRENCY,
THURSDAY, 11*th March*, 1847.

The president submitted a memorial from "the stockholders of the Consolidated Association of the Planters of Louisiana," assembled together at a meeting held at the house of the said association on the 2d day of March instant for the purpose of deliberating on the affairs of said institution, praying that the Legislature authorize by law a transaction with the holders of the State bonds issued in favor of the Consolidated Association already due or becoming due in 1848, by which the payment of said bonds be extended to periods of 10, 15, and 20 years from the 30th June, 1848, and to capitalize all arrears of interest accruing up to that period, to bear equal interest with the bonds, and to be payable at the same periods; that a board of managers be organized by law to conduct the liquidation, in which board the interests of the State and those of the stockholders shall each be fairly represented and protected, and with such powers as shall enable them to raise the needful amount regularly to meet the interest as it accrues on the State bonds, and such further annual

amounts as shall be needful to provide for the due payment of each series of deferred bonds as they mature.

Said memorial was read and was referred to the committee on finance.

378 *Hearing and Submission.*

Extract from the Minute Book, November Term, 1886.

NEW ORLEANS, TUESDAY, *February 1st*, 1887.

Court met pursuant to adjournment.

Present: Hon. Don A. Pardee, circuit judge.

WILLIAM CRESSEY
vs.
CONSOLIDATED ASSOCIATION OF THE PLANTERS OF LOUISIANA. } No. 10432.

This cause, as continued from yesterday, came on for final hearing upon the bill and amended bill of complaint, the petition of the State of Louisiana, and the answers and exhibits, proofs and replications to the answers of the defendants, Barthelemy Beaubay, Hermann Mayer, Charles Getzinger, Pedro Landreaux, Marie Landreaux, Meyer Lemann, Bernard Lemann, R. T. Hanson, Mrs. George Josiah Lord, and the Citizens' Bank of Louisiana, Hornor & Lee appearing for complainant; M. J. Cunningham, attorney general of Louisiana, on behalf of the State of Louisiana, *pro inter esse suo;* Robert H. Marr, Rouse & Grant, Samuel P. Blanc, for the defendants named.

379 And, after hearing further argument from counsel for the respective parties, the said cause was submitted, when the court took time to consider.

Complainant's Offerings. Filed February 1st, 1887.

U. S. Circuit Court.

WILLIAM CRESSEY
vs.
CONSOLIDATED ASSOCIATION OF THE PLANTERS OF LOUISIANA. } No. 10432.

Counsel for complainant and for the State of Louisiana make the following offers of evidence:

1st. The exhibits annexed to the original bill of complaint.
2d. do. do. supplemental do.
3d. do. do. petition *inter esse suo* of the State of Louisiana.
4th. The admissions upon the hearing.
5th. The statutes of the State of Louisiana relating to the Consolidated Association of the Planters of Louisiana.

6th. The extracts from the journal of the senate of Louis-
380 iana for the year 1847, found on pages 29, 114 of volume 1, and pages 40, 41, 42, 46, 47, and 109 of volume 2.

7th. An act of hypothecation of Jean Bte. Allain to the association, dated 23 May, 1829, marked "X," introduced to show the form of the original acts of mortgage signed by all the stockholders.

8th. Form of act of mortgage executed by all the stockholders accepting the provisions of the act of the Legislature of 1847 and the resolutions of the board of directors relating thereto, marked XX.

9th. The resolutions of the board of directors accepting the provisions of the act of 1847.

10th. The statement of the indebtedness of the various defendants, whose case is now on trial, as it appears from the books of the association, marked XXX.

Complainant's Evidence.

The exhibits annexed to the original bill of complaint. See pages 17 to 38, inclusive, of this transcript.

381 The admissions upon the hearing. See page 237 of this transcript.

The statutes of the State of Louisiana relating to the Consolidated Association of the Planters of Louisiana. See pages 240 to 357, inclusive, of this transcript.

The extracts from the journal of the senate of Louisiana for the year 1847, found on pages 29, 114 of volume 1, and pages 40, 41, 42, 46, 47, and 109 of volume 2. See pages 358 to 377, inclusive, of this transcript.

An act of hypothecation of Jean Bte. Allain to the association, dated 23 May, 1829, marked "X," introduced to show the form of the original acts of mortgage signed by all the stockholders.

PAROISE D'IBERVILLE, *Dans l'Etat de la Louisiane:*

382 Ce vingt-troisième de mai mil huit cent vingt-neuf, et dans la cinquante-troisième année de l'Independance des Etats-Unis d'Amérique, par devant John Dutton, judge *ex officio* notaire public dument commissioné dans et pour la dite Paroisse d'Iberville y resident et en presense des temoins ci-après nommes et soussignés.

Sont personellement comparus M. Jean Baptiste Allain, habitant cultivateur et proprietaire domicilié en cette Paroisse d'Iberville et madame Carmelite Landry son épouse majeure, du dit sieur son mari dument assistée et autorisée à l'effet et pour la pleine validité des presentes; lesquels dits sieur et dame Allain ont declaré:

Qu'attendu qu'aux termes de deux actes de la legislature de cet Etat; le premier approuvé le seize mars mil huit cent vingt-sept incorporant les souscripteurs à l'association consolidée des cultivateurs de la Louisiane et le second approuvé le dix-neuf février mil huit cent vingt-huit, portant amendement audit acte d'incorporation, des quels deux actes les dits sieur et dame Allain déclarent avoir parfaite connoissance, le dit sieur Allain est devenu actionnaire du nombre de huit actions dans la dite association s'élevant à la somme de quatre mille piastres.

Et attendu que pour les causes et effets mentionnés aux dits deux actes législatifs le dit sieur Allain en sa qualité d'actionnaire, est

tenu de fournir hypothêque, a la satisfaction de la direction, sur des proprietes de valeur égale au montant des actions souscrites chaque action étant de la somme de cinq cent piastres; en conséquence et pour les causes et effets ci-dessus, notamment ceux mentionnés dans les sections cinq et six du dit prémier acte législatif, expliquées par la section six du dit acte portant amendement, la quelle section cinq pourvoit à la garantie du capital et des interets des obligations de l'état a payer par la dite association—les dits sieur et dame Allain celle-ci toujours assistée et autorisée que dit est, se sont, par les présentes, tant pour eux que pour leur héritiers et ayant cause obligés conjointement et solidairement envers le president, directeurs, & Co. de la dite association, et ont en outre affecté, obligé, et hypothêqué, en faveur des mêmes president, directeurs, et Co., savoir:

1°. Une habitation située dans la dite Paroisse d'Iberville rive gauche du fleuve Mississippi, mesurant cinq arpents de face au fleuve sur quatre-vingts arpents de profondeur ouvrant de cinq degres bonde enhaut par une autre terre appartenant au dit sieur Allain, et enbas par M. Drausir Allain de la quelle habitation soixante-quinze arpents sont cultivés en coton, cinquante-cinq arpents en mais et le surplus étant en bois debout.

2°. Les edifices qui sont sur la dite habitation consistant en une maison de maître, deux magasins a mais, un moulin à mais, une cuisine, une forge montée, quatre cabanes à négres, poulailler, &c.

3°. Sept chevaux et quatre paires de beufs.

4°. Et dix-sept esclaves attaches à la dite habitation, dont les noms et ages suivent, savoir: François de 34 ans, Julien de 32, Ben de 25, Colin de 14, Marcelin de 9, Polidor de 8, Baptiste de 8,
384 Celestin de 7, Naelet de 5, Robert de 5, Saturne de 4, Ellen de 34, Babet de 29, Liza de 25, Pouponne de 16, Agathe de 3, and Ophelia de 5 mois.

La présente hypothêque est consentie sous la condition expresse: que si le dit sieur Allain paye le montant de ses actions sur requisition de la direction, ce qui si aura lieu qu'à l'effet de payer les obligations fournient par l'État et les interêts dus sur icelles, lui et la dite dame son épouse seront entièrement dégagés, et pourront en exiger main levée.

Cette hypothêque est également consentie sous la condition: que si un autre actionnaire était accepté—par la direction, au lieu et place du dit sieur Allain—celui-ci et la dite dame son épouse seront plainement dégagés, et pourront de méme en exiger main levée. Il est encore bien entendu que si le produit des propriétés presentement hypothequées ne suffisoit pas en cas de vente pour payer le montant des actions du dit sieur Allain, et sera obligé de payer le reliquat dans tel delai qu'il plairoit à la direction de fixer.

Promettent et s'obligent les dits sieurs et dame Allain de ne vendre, aliener, ni hypothequer aucune partie des biens ci-dessus, ni d'en disposer d'aucune manière jusqu'à ce que les causes et effets pour lesquels la présente hypothêque est consentie aient été pleinement satisfaits, et j'usqu'à ce que main levée de la dite hypothêque aie été donnée, soit conformement à la section huit de l'ordonnance

établissant des reglemens pour l'administration de la dite as-
385 sociation, soit autrement; et si contre la teneur et la véritable intention de la présente clause les dits sieurs, et dame Allain, ou aucun d'eux, vendent, alienent ou hypothequent aucune partie des dits biens, ou en disposent en aucune manière tout semblable contrat fait au mepris de la presente clause sera mil et de mil effet à l'égard de la dite association sont les droits et privilèges ne seront en aucune mannière alterés ou effetés par aucune vente, alienation, hypothêque, ou disposition faite en violation de la presente clause, la dite association se reservant les droits, privilèges et facultés necessaire, afin qu'en cas de non accomplissement d'aucune des obligations qui leur sont imposées, les biens ici décrits puissent être à la requête des dits président directeurs et compe saisis, et vendres par la voie de l'exécution parée en quelques mains que les dits biens ou aucune partie d'iceux puissent se trouvés être passées en vertu de tout semblable acte de disposition ou alienation fait au mepris de la présente clause de la même manière que s'il n'avoit été fait, et ce sans que la dite association puisse être tenue de poursuivre préalablement les dits sieur et dame Allain, ni d'obtenir jugement contre eux ni en aucune manière disenter leurs biens et propriétés; et promettent en outre les dits sieur et dame Allain dans le cas ou par la suite les dits président Directeurs & Co., viendroient à l'appercevoir d'aucun vice dans les titres des propriétés susdécrites, qu'eux les dits sieur et dame Allain remedieront à ces vices, et ce dans les delais raisonables qui leur seront prescripts par les dits présidents directeurs et comp., sous peine d'être privés du crédit assuré par la charte à tout actionnaire.

386 Renoncent formellement les dits sieur et dame Allain au benefice de toutes loix qui pourroient etre dans sa suite passées par la Legislature soit pour changer le mode actuel de proceder sur saisie soit pour accorder de plus longs delais aux debiteurs ou pour suspendre les payemens et en fin a toutes lois passés ou a passes qui vendroient a attablir le present contrat lequel les dits sieurs et dame Allain veulent qu'il aie pleine force et vertu, non obstant toutes lois a ce contraires et declare la dite dame Allain toujours assitée, et authorisée que dit est, qu'en intervenant au present contrat ce n'a ete que de son propre mouvement et volonte libre dans l'intention de fournir un titre aussi bon que possible a la dite association sur quoi le notaire soussigne lui ayant lu la section vingt-trois du dit premier acte legislatif qui dite que dans tous les contrats ou obligations hypothecaires consenties par des individus en faveur des president directeurs et compe ou les femmes des dits individus majeures qu'elles soient s'obligeroient conjointement et solidairement avec eux les biens et droits de la femme soient dotaux soient de toute autre nature seront affectes par les dits contrats ou obligations, la dite dame Allain a declare qu'elle a parfaite connoissance de ce a quoi elle s'oblige, qu'elle persiste dans la meme volonte qu'elle a deja manifestée et que de son plein gre et volonte libre elle approuve et ratifie tout ce qu'elle a fait en vertu des presentes se soumettant aux peines prononcees contre elle par la section vingt-trois sus rappelée.

D'apres le certificat de bureau des alienations de cette Paroisse

d'Iberville lieu de la situation des immeubles il n'existe
387 point d'enregistrement d'acte d'ou il resulteroit que les biens qui font l'objets des presentes ont ete alienes par les dits sieur et dame Allain.

Et d'apres le certificat du bureau des hypotheques de cette meme paroisse les deux certificats ci-annexes.

Il paroit que les biens susmentionnes des dits sieur et dame Allain ne sont affectes d'autres hypotheques que d'une hypotheque toute et legale resultant de la curatelle du mineur Ursin Allain dont le montant n'est pas exactement etabli, et qui n'est pas moindre de trois mille piastres ni plus de trois mille cinq cent piastres.

Et par suite de ceque dessus les dits sieur et dame Allain ont dit et declare que voulant user du credit qui leur est accordé par la section six du dit premier acte legislatif ils se sont adresses aux dits president, directeurs & Co. de la dite association a l'effet d'obtenir, comme en effet ils reconnoissent avoir obtenu, le pret non encore effectué de la somme de deux mille piastres a faire deduction de l'escompte calcule sur le pied de huit pour cent par an, en consequence les dits sieur et dame Allain promettent et l'obligent conjointement et solidairement de rembourser la dite somme de deux mille piastres le vingt-troisieme jour du mois de May mil huit cent trente, a jour fixe a l'effet de quoi ils ont presentement produit une obligation de la dite somme de deux mille piastres souscrite ce jour par eux les dits sieur et dame Allain sous la solidarité que dessus payable a la dite epoque vingt-troisieme jour de May mil huit cent trente, fixe aux dits
388 président, directeurs et comp., la quelle obligation a ete signée et paraphée ne varietur par le notaire sousigne conformement a la loi et en conformite de l'acte hypothecaire susmentionne. Tres expressement entendu 1° que les dits sieur et dame Allains'obligent par les presentes conjointement et solidairement a payer a l'expiration de chaque année en deduction de dit pret un quatorzieme ou toute autre quantite, que les presidents, directeurs & Co. pourroient avoir besoin de faire entrer et de plus l'escompte pour l'année sur la balance dont ils resteront debiteurs, etant bien entendu que l'obligation de deux mille piastres ci dessus decrite restera en la possession des dits president, directeurs & Co., lesquels crediteront au dos de l'obligation susdite les dits sieur et dame Allain de tout payement partiel, fait en deduction d'icelle obligation conformement aux presentes.

2. Que si les dits sieur et dame Allain manquoient a effectuer le payement requis d'aucune partie du capital ou des escomptes ainsi qu'il est dit ci dessus, qu'alors ils perdront le droit de prolonger leurs payements ainsi que tous autres avantages qui leur sont accordes et seront sujets a etre poursuivis en remboursement de tout ce qu'ils pourroient devoir a l'association, tant en capital qu'interets et frais.

Et attendu que le payement du pret ci-dessus obtenu est subordone a l'acceptation des presentes par les dits president et directeurs & Co. et a la remise qui sera faite a ceux-ci de l'obligation ci-dessus la dite dame Allain sous l'autorisation du dit sieur son mari
389 pour ce qui la concerne, donne par les presentes au dit sieur son mari pouvoir de pour elle et en son non soumettre le pres-

ent acte a l'acceptation des dite president, directeurs & Co. et sur ce fait leur remettre l'obligation ci-dessus en recevoir le montant sauf la deduction de l'escompte susmentionne a cet effet tirer tous checks, mandats et generalement pour parvenir a une conclusion de l'affaire en question tout ce qu'elle pourroit elle-meme si elle se trouvoit sur les sieur a la Nouvelle-Orleans.

Fait et passé en mon etude en la dite paroisse les jour mois et an susdits en presence de Messrs. Nicholas Sburlati et Alexandre Cuvillier, temoins competens qui ont signe avec la dite dame Carmelite Allain, nee Landry, et moi juge susd'r. le dit sieur Jean Baptiste Allain ne sachant pas ecrire a fait sa marque ordinaire.

Marque ordinaire de JEAN BAP'TE ALLAIN.
CARMELITE LANDRY.
N. SBURLATI.
ALEX. CUVILLIER.
JOHN DUTTON, *P. Judge.*

I, John Dutton, parish judge in and for the parish of Iberville, do hereby certify that the foregoing is a true copy of the original recorded in my office and duly inscribed in my Register of Mortgages this twenty-third day of May, in the year of our Lord one thousand eight hundred and twenty-nine.

In testimony whereof I have hereunto set my hand and public seal the day and year as above.

[SEAL.] JOHN DUTTON, *P. Judge.*

390 On this twenty-fifth day of May, in the year eighteen hundred and twenty-nine, I, John Dutton, parish judge in and for the parish of Iberville, do hereby certify that neither on the day of the date of the foregoing act nor since that day has there been recorded or passed in my office no act of alienation or mortgage affecting the property mortgaged in the foregoing act other than that in said act contained.

Witness my hand and public seal.

[SEAL.] JOHN DUTTON, *P. Judge.*

I, the undersigned, judge in and for the parish of Iberville, *ex officio* recorder of mortgages in and for said parish, do hereby certify that the inscription of the foregoing mortgage was renewed on the 11th day of May, in the year eighteen hundred and forty-three, in Record Book V, No. 264.

In testimony whereof I have hereunto set my signature and public seal.

[SEAL.] JOHN DUTTON, *P. Judge.*

The lands and slaves were, on the 8th April, eighteen hundred and thirty-four, with the stock in the Consolidated Bank, sold at sale of succession of Jean Baptiste Allain to Julien Allain and by the latter, on the 27th June, 1835, transferred — Carmelite Landry, widow of J'n Bte. Allain, she assuming the mortgage and obligations of the original subscriber for stock, J. B. Allain, in relation to

said stock and loan. The Widow Allain subsequently sold two arpents of the land—that is, 2-fifths of it—but the remainder and slaves are fully sufficient to pay for the stock subscribed for. All which I certify.

[SEAL.] JOHN DUTTON, *P. Judge.*

391 *Translation.*

PARISH OF IBERVILLE, *In the State of Louisiana:*

This twenty-third day of May, one thousand eight hundred and twenty-nine, and in the fifty-third year of the Independence of the United States of America, before John Dutton, judge, *ex officio* notary public, duly commissioned in and for said parish of Iberville, therein residing, and in presence of the witnesses hereinafter named and undersigned, have personally appeared Mr. Jean Baptiste Allain, resident planter and owner, domiciled in this parish of Iberville, and Mrs. Carmelite Landry, his wife, major, by her said husband, hereto duly assisted and authorized and for the purpose of making valid these presents, which said Mr. and Mrs. Allain have declared.

Whereas, according to the terms of two acts of the Legislature of this State, the first, approved the sixteenth of March, one thousand eight hundred and twenty-seven, incorporating the subscribers to the Consolidated Association of the Planters of Louisiana, and the second, approved the nineteenth February, one thousand
392 eight hundred and twenty-eight, amending said act of incorporation, of which two acts the said Mr. and Mrs. Allain declared they have full knowledge, the said Mr. Allain did become a stockholder in the number of eight shares of stock in the said association, amounting to the sum of four thousand dollars.

And, considering that for the causes and purposes mentioned in said two legislative acts, the said Mr. Allain, in his capacity as slaveholder, is required to furnish mortgage, satisfactory to the directors, upon property equal in value to the amount of the shares subscribed, each share being for the sum of five hundred dollars, in consequence and for the causes and purposes aforesaid, particularly those mentioned in the fifth and sixth sections of the legislative act first aforesaid, explained by the sixth section of the act amendatory thereof, which said section five provides for the guarantee of the capital and interest of the obligations of the State to be paid by the said association, the said Mr. and Mrs. Allain, the latter always assisted and authorized as aforesaid, did, by these presents, obligate themselves, their heirs and assigns, jointly and severally, unto the president, directors, and company of the said association, and have besides affected, obligated, and mortgaged in favor of the said president, directors, and company the following property, to wit:
393 1st. A plantation situate in said parish of Iberville, on the left bank of the Mississippi river, measuring five arpents front on the river by a depth of eighty arpents, widening by five degrees, bounded above by another property belonging to the said Mr. Allain and below by that of Mr. Drausin Allain, seventy arpents of

which said plantation are cultivated in cotton, fifty-five arpents in Indian corn, and the remainder consisting in standing timber.

2d. The buildings which are on the said plantation, consisting of a dwelling-house, two corn-houses, a corn-mill, one kitchen, a blacksmith shop, four negro cabins, a hen-house, etc.

3d. Seven horses and four pairs of oxen.

4th. And seventeen slaves attached to the said plantation, the names and ages of which are as follows, to wit: Francois, 34 years; Julien, 32; Ben., 25; Colin, 14; Marcelin, 9; Polidor, 8; Baptiste, 8; Celestin, 7; Nallet, 5; Robert, 5; Saturne, 4; Ellen, 34; Babet, 29; Liza, 25; Pouponne, 16; Agathe, 3, and Ophelia, 5 months.

The present mortgage is granted under the express condition that if the said Mr. Allain pays the amount of his shares on the demand of the board, which will only be made for the purpose of paying the obligations furnished by the State and the interest due thereon, he and his said wife will be entirely released and equally able to require the cancellation of the said mortgage.

394 This mortgage is further granted under the condition that, if another shareholder should be accepted by the board in place and stead of the said Mr. Allain, he and his said wife will be fully released and will be equally able to exact cancellation of the said mortgage. It is also well understood that if the proceeds of the property now mortgaged will not suffice in case of sale to pay the amount of the shares of the said Mr. Allain he will be obliged to pay the remainder within the delay which it will please the board to fix.

The said Mr. and Mrs. Allain promise and bind themselves neither to sell, alienate, nor mortgage any portion of the above-mentioned property nor to dispose thereof in any manner until the causes and purposes for which this mortgage is granted shall have been fully satisfied and until the said mortgage shall have been released, in conformity with the eighth section of the ordinance establishing the regulations for the administration of the said association or in any other manner; and if against the tenor and the true intention of this clause the said Mr. and Mrs. Allain or either of them

395 sell, alienate, or mortgage any part of said property or dispose of it in any manner any such contract made in contravention of this clause shall be null and of no effect as regards the said association, the rights and privileges of which shall in no manner be altered or affected by any sale, alienation, mortgage, or disposition made in violation of this clause; said association reserving the rights, privileges, and powers necessary in case of the non-fulfilment of any of the obligations which are imposed upon them, the property herein described at the suit of the said president, directors, and company may be seized and sold by way of execution, no matter in whose hands the said property or any part thereof may have passed by virtue of any similar act of disposition or alienation made contrary to this clause, in the same manner as if the same had not been made, and this without the said association being held to sue previously the said Mr. and Mrs. Allain nor to obtain judgment against them, nor in any manner to discuss their goods and estates; and

the said Mr. and Mrs. Allain promise besides that should the
396 said president, directors, and company hereafter discover any vice in the titles to the property above described, that they, the said Mr. and Mrs. Allain, will remedy these vices, and this within such reasonable delays which shall be prescribed by the said president, directors, and company under penalty of being deprived of the advantages secured by the charter to each stockholder.

The said Mr. and Mrs. Allain renounce formally the benefit of all laws which may hereafter be passed by the Legislature, whether to change the actual mode of proceeding by seizure, whether to grant longer delays to debtors, or to suspend payments, and, finally, of all laws passed or to be passed which may tend to weaken the present contract which the said Mr. and Mrs. Allain desire shall have full force and virtue, notwithstanding all laws to the contrary; and the said Mrs. Allain, always assisted and authorized as aforesaid, declares that in intervening in this contract she does so of her own accord and free will, with the intention of furnishing the best title
397 possible to said association; whereupon the undersigned notary having read to her the twenty-third section of the first mentioned legislative act, which says that in all contracts or hypothecary obligations entered into by individuals in favor of the said president, directors, and company, where the wives of the said individuals are majors, they shall be bound conjointly and solidarily with them, and the goods and rights of the wife, whether dotal or of any other nature, shall be affected by said contracts or obligations, the said Mrs. Allain has declared that she has full knowledge of that to which she binds herself; that she persists in the same will which she has already expressed, and that willingly and of her own free will she approves and ratifies all that she has done by virtue of these presents, submitting herself to the penalties pronounced against her by section twenty-three, above mentioned.

According to the certificate of the office of conveyances of this parish of Iberville, the place in which the immovables are situate, there is no act registered whereby it would appear that the property referred to in these presents have been alienated by the said
398 Mr. and Mrs. Allain; and, according to the certificate of the office of mortgages of the same parish, both certificates being hereto annexed, it appears that the property above mentioned of the said Mr. and Mrs. Allain are affected by no other mortgages than the tacit and legal mortgage resulting from the curatorship of the minor, Ursin Allain, the amount whereof is not exactly established, and which is not less than three thousand dollars nor more than three thousand five hundred dollars.

And in consequence of the foregoing the said Mr. and Mrs. Allain have said and declared that, desiring to use the advantage which is accorded them by section six of said legislative act, they have applied to the said president, directors, and company of said association for the purpose of obtaining, as in fact they recognize having obtained, the loan, not yet effected, of the sum of two thousand dollars, with deduction to be made of discount calculated at the
399 rate of eight per cent. per annum; in consequence the said

Mr. and Mrs. Allain promise and obligate themselves, conjointly and solidarily, to reimburse the said sum of two thousand dollars the twenty-third day of the month of May, one thousand eight hundred and thirty, punctually on that day, for the purpose of which they did produce an obligation for the said sum of two thousand dollars subscribed this day by them, the said Mr. and Mrs. Allain, solidarily as above mentioned, payable on said date, twenty-third day of May, one thousand eight hundred and thirty, punctually to the said president, directors, and company, which obligation has been signed and paraphed *ne varietur* by the undersigned notary, conformably to the law and in conformity to said act of mortgage above mentioned. It is expressly understood—

1st. That the said Mr. and Mrs. Allain obligate themselves by these presents, jointly and solidarily, to pay at the expiration of each year in reduction of said loan one-fourteenth or any such other proportion which the president, directors, and com-
400 pany may require to be made, and besides the discount for the year on the balance for which they will remain debtors, it being well understood that the obligation of two thousand dollars here-above described will remain in the possession of the said president, directors, and company, who will credit on the back of the obligation aforesaid the said Mr. and Mrs. Allain of all partial payments made in reduction of said obligation in conformity with these presents.

2d. That if the said Mr. and Mrs. Allain fail to make the payment required for any part of the capital or the discounts as aforesaid, then they will lose the right to prolong their payments, as well as all other advantages granted them, and shall be subject to be sued for the reimbursement of all they may owe the association—capital, interest, and costs.

And, considering that the payment of the loan here-above obtained is conditioned on the acceptance of these presents by the said president, directors, and company and to the remittance which will be made to them of the obligation above named, the said Mrs. Allain, under authorization of her said husband for that which concerns her, gives by these presents to her said husband
401 authority for her and in her name to submit the present act to the acceptance of the said president, directors, and company, and by this fact to put them in possession of the obligation above named, to receive the amount, less the deduction of the discount above mentioned, and for this purpose to draw all checques, drafts, and generally to arrive at a conclusion of the business in question—to do all she could herself do if she were present in New Orleans.

Made and passed in my study, in the said parish, the day, month, and year above named, in presence of Messrs. Nicholas Sburlati and Alexandre Cuvillier, competent witnesses, who have signed, with the said Mrs. Carmelite Allain, née Landry, and myself, judge aforesaid;

the said Mr. Jean Baptiste Allain, not knowing how to write, has made his ordinary mark.

Ordinary mark of JEAN BIPTISTE ALLAIN: x
CARMELITE LANDRY.
N. SBURLATI.
ALEX. CUVILLIER.
JOHN DUTTON, *P. Judge.*

402 Form of act of mortgage executed by all the stockholders accepting the provisions of the act of the Legislature of 1847 and the resolutions of the board of directors relating thereto, marked XX.

ETATS-UNIS D'AMERIQUE,
Etat de la Louisiane, Ville de la Nouvelle-Orleans:

Aujourd'hui, ce — ——, mil huit cent quarante—, et dans la soixante et — année de l'Indépendence Américaine.

Par-devant Amédée Ducatel, notaire public, dûment commissionné pour cette ville, et la paroisse d'Orléans, y résidant, et en présence des témoins ci-après nommés et soussignés.

Ont comparu: Monsieur —— —— et madame —— ——, son épouse, majeure, du dit sieur son mari dûment assistée et autorisée à l'effet et pour la pleine validité des présentes, domiciliés en la paroisse — et cet Etat d'une part; et Monsieur Alonzo Morphy, demeurant en cette ville, agissant en qualité de president de l'Association Consolidée des Cultivateurs de la Louisiane, établie en cette ville, et en vertu des résolutions prises par les commissaires et les directeurs de cette institution, dans leur séance du cinq juin
403 mil huit cent quarante-sept d'autre part.

Lesquels ont exposé que par acte passé le — ——, devant —— —— le dit sieur et la dite dame —— —— ont hypothéqué pour la garantie de — actions du fonds capital de l'Association Consolidée des Cultivateurs de la Louisiane, montant à la somme de — et pour un prêt de — accordé sur ses actions, certaines propriétés décrites dans le dit acte, auquel il est référe pour plus de certitude, et comme fesant partie des présentes.

Que la dette du dit sieur et de la dite dame —— —— s'élève aujourd'hui en capital et interêts arrêtés au — à la somme de —.

Que les commissaires et les directeurs nommés en vertu d'un acte de la Legislature de cet etat (approuvé le 6 Avril, 1847, et intitulé "acte à l'effet de mettre l'Etat à l'abri des partes qui pourraient résulter des bons de l'Etat, émis en faveur des banques hypothécaires") pour administrer les affaires de l'Association Consolidée, ayant résolu dans la séance du cinq juin mil huit cent quarante-sept.:

"1°. D'exiger une contribution annuelle de six piastres par action de la part des actionnaires, à l'effet de payer régulièrement les obligations contractées par l'Etat pour la dite institution.

404 "2°. De faire balancer et arrêter le compte de chaque actionnaire, tant en capital qu'en intérêts, pour le montant total en soit devisé en dix-huit paiments annuels, dont le premier devra

s'effectuer, au plus tard, le premier juin mil huit cent quarante-huit, et les autres, au plus tard, le premier juin de chacune des années suivantes, avec intérêts au taux de sept pour cent l'an sur le montant du capital restant dû au moment de payer chaque dix-huitième."

Que le dit sieur et la dite dame —— —— se soumettant à la résolution exigeant le paiement de la contribution annuelle de six piastres par action, et acceptant les délais de un à dix-huit ans qui sont fixés pour le paiement de leur dette, parce qu'ils considèrent que ces delais sont nécessaires pour les mettre à même de payer la dite dette, tout en payant la contribution.

Le dit sieur Alonzo Morphy est convenu avec le dit sieur et la ditte dame —— —— que leur dette sera payable en dix-huit annees, mais cette convention est faite sous la réserve expresse de tous les droits et privilèges de l'Association Consolidée résultant de l'acte du (original act of mortgage to secure stock subscription) et notamment sous la réserve de l'hypothèque consentie par le dit acte sur les propriétés y décrites, par le dit sieur et la dite dame —— —— tant pour la garanties des dites — actions, que pour assurer le remboursement de l'obligation souscrite par eux. Le dit sieur
405 A. Morphy entendent seulement assurer au dit sieur et à la dite dame —— —— termes et délais pour le paiement de leur dite obligation, et déterminer le mode de vente des propriétés en cas de saisie, conformément à ce qui va être stipulé ci-après, sans opérer aucune novation.

En conséquence, le dit sieur et la dite dame —— —— s'obligent à payer et rembourser la susdite some de — à la dite Association Consolidée, avec intérêts sur cette somme à raison de sept pour cent par an, dans un, deux, trois, quatre, cinq, six, sept, huit, neuf, dix, onze, douze, treize, quatorze, quinze, seize, dix-sept, et dix-huit ans à partir — ——. A cet effet et à l'appui de l'obligation ci-dessus prise, le dit sieur et la dite dame —— —— ont fourni dix-huit bons ou obligations souscrites par eux conjointement et solidairement, datées de ce jour, et faites à l'ordre du caissier de la dite Association Consolidée.

La première, de la somme de —, composée: 1°, de —, dix huitième du susdit capital, et 2°, de —, interêts à sept pour cent l'an sur la totalité de ce capital, et payable à jour fixe; la seconde, de la somme de —, composée: 1° —, dix-huitième du dit capital; 2°, et de —, intérets à sept pour cent l'an sur toute la balance due sur ce
406 capital, et payable à jour fixe; la troisième, de la somme de — composée: 1°, — dix-huitième du dit capital; 2°, et de —, intérêts à sept pour cent l'an sur toute la balance due sur ce capital et payable à jour fixe; la quatrième, de la somme de —, composée: 1°, — dix-huitième du dit capital; 2°, et de —, intérêts à sept pour cent l'an sur toute la balance due sur ce capital, et payable à jour fixe; la cinquième, de la somme de —, composée: 1°, —, montant d'un dix-huitième du dit capital; 2°, et de —, montant des intérets à sept pour cent l'an sur toute la balance due sur le capital, et payable à jour fixe; la sixième de la somme de —, composée: 1°, —, montant d'un dix-huitième du dit capital; 2°, et de —, montant des intérêts à sept pour cent l'an sur toute la balance due sur le capital,

et payable à jour fixe, le — ——; la septième, de la somme de —, composée, 1°, —, montant d'un dix-huitième due dit capital; 2°, et de —, intérêts à sept pour cent l'an sur toute la balance due sur ce capital, et payable à jour fixe, le — ——;
407 la huitième, de la somme de —, composée: 1°, de —, dix-huitième du dit capital; 2°, et de —, intérêts à sept pour cent l'an sur toute la balance due sur ce capital, et payable à jour fixe, le — ——; la neuvième, de la somme de —, composée: 1°, de —, dix-huitième du dit capital; 2°, et de —, intérêts à sept pour cent l'an sur toute la balance due sur ce capital, et payable à jour fixe, le — ——; la dixième, de la somme de —, composée: 1°, de —, dix-huitième du dit capital; 2°, et de intérêts à sept pour cent l'an sur toute la balance due sur ce capital, et payable à jour fixe, le — ——; la onzième de la somme de —, composée: 1°, de —, dix-huitième du dit capital; 2°, et de intérêts à sept pour cent l'an sur toute la balance due sur le capital, et payable à jour fixe, le
408 — ——; la douzième, de la somme de —, composée: 1°, de —, dix-huitième du dit capital; 2°, et de —, intérêts à sept pour cent l'an sur toute la balance due sur le capital, et payable à jour fixe, le — ——; la treizième, de la somme de —, composée: 1°, de —, dix-huitième du dit capital; 2°, et de —, intérêts à sept pour cent l'an sur toute la balance due sur ce capital, et payable à jour fixe, le — ——; la quatorzième de la somme de —, composée: 1°, de —, dix-huitième du dit capital; 2°, et de intérêts à sept pour cent l'an sur toute la balance due sur ce capital, et payable à jour fixe, le — ——; la quinzième de la somme de —, composée: 1°, de —, dix-huitième du dit capital; 2°, et de —, intérêts à sept pour cent l'an sur toute la balance due sur ce capital, et payable à jour fixe, le — ——; la seizième de la somme de —, composée: 1°, de —, dix-huitième du dit capital; 2°, et de intérêts à sept pour cent l'an sur toute la balance due sur ce capital, et payable à jour
409 fixe, le — ——; la dix-septième, de la somme de —, composée: 1°, de —, dix-huitième du dit capital; 2°, et de intérêts à sept pour cent l'an sur toute la balance due sur ce capital, et payable à jour fixe, le — ——; et la dix-huitième, de la somme de —, composée: 1°, de dix-huitième du dit capital; 2°, et de —, intérêts à sept pour cent l'an sur toute la balance due sur ce capital, et payable à jour fixe, le — ——.

Lesquelles obligations, payables au comptoir de la dite Association Consolidée, en cette ville, ont été remises au dit sieur Alonzo Morphy en qualités, après avoir été signées et paraphées *ne varietur* par le notaire soussigné, pour les identifier tant avec les présentes qu'avec l'acte précité du — ——, devant le dit sieur et la dite dame s'obligent en outre formellement, par ces présentes, conjointement et solidairement, à payer à la dite Association Consolidés, à son comptoir en cette vllle, le premier juin fixe, de l'année mil huit cent quarante-neuf, et le premier juin fixe, de chacune des seize années qui suivront, une contribution de six piastres par action qu'ils possèdent dans le fonds capital de la dite institution, c'est-a-dire: la somme de —, le premier juin fixe de chacune des susdites années, le nombre de leurs
410 actions étant de —. Il est expressément convenu, 1°, que dans le cas où le dit sieur et la dite dame —— ——, ne rem-

pliraient pas fidèlement chacune des obligations qu'ils contractent par ces présentes, aucun nouveau délai ne leur sera accordé, et les commissaires et les directeurs de la dite Association Consolidés procèderont immédiatement contre les propriétés hypothéquées par l'acte précité du —, devant lesquelles propriétés seront saisies et vendues de la maniére suivants, savoir: au comptant pour toutes sommes échues, et aux termes restant au dit sieur et à la dite dame — —— pour toutes sommes non échues; sans estimation.

2°. Et que rien dans le présent acte ne pourra étre considéré comme portant atteinte aux droits, privilèges, actions et hypothèque de la dite Association Consolidée résultant en sa faveur de l'acte précité du —, lequel acte demeure dans toute sa force et vertu, n'y étant rien dérogé ni innové par ces présentes, sauf ce qui a été stipulé ci-dessus, relativement aux délais accordés et au mode de vente en cas de saisie.

Il est en outre expressément convenu qu'en cas de paiement par anticipation d'aucune des obligations ci-dessus fournies, les intérêts stipulés dans le corps de la dite obligation seront remis au dit sieur et à la dite dame — ——, pour tout le temps restant a courir.

Dont acte: Fait et passé en l'etude a la Nouvelle Orléans, le jour, le mois et l'an susdits, en présence de messieurs —— ——, témoins compétens qui ont signé avec les comparus et le notaire, après lecture faite.

411 *Translation.*

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

To-day, this — ——, one thousand eight hundred and forty —, and the sixty and — year of American Independence, before Amédée Ducatel, notary public, duly commissioned for this city and the parish of Orleans, therein residing, and in presence of the witnesses hereafter named and undersigned, personally appeared Mr. —— —— and Madame —— ——, his wife, a major, by her said husband duly assisted and authorized to the effect and for the full validity of these presents, domiciled in the parish of ——, in this State, of the one part, and Mr. Alonzo Morphy, residing in this city, acting in the quality of president of the Consolidated Association of the Planters of Louisiana, established in this city, and by virtue of the resolutions adopted by the commissioners and directors of that corporation at their meeting of the fifth of June, one thousand
412 eight hundred and forty-seven, of the other part, who declare that by act passed on the — ——, before —— ——, the said Mr. —— —— and the said Mrs. —— —— did hypothecate, for the security of — shares of the capital stock of the Consolidated Association of the Planters of Louisiana, amounting to the sum of — and for the loan of — granted on its shares, certain properties described in the said act, referred to for greater certainty and made part of these presents.

That the debt of the said Mr. —— —— and of the said Mrs. ——

—— amounts this day, in capital and interest, calculated up to the —— ——, to the sum of —.

That the commissioners and directors named by virtue of an act of the Legislature of this State (approved the 6th April, 1847, and entitled "An act to protect the State against loss on account of its liabilities for bonds issued for the use of the property banks") to administer the affairs of the Consolidated Association, having resolved at the meeting of fifth June, one thousand eight hundred and forty-seven—

413 "1st. To exact an annual contribution of six dollars per share from the stockholders for the purpose of paying punctually the obligations contracted by the State for said corporation.

"2d. To balance and compute the account of each stockholder, in capital and interest, so that the total amount shall be divided into eighteen annual payments, of which the first shall become due, at latest, the first of June, one thousand eight hundred and forty-eight, and the others, at latest, on the first of June of each of the following years, with interest at the rate of seven per cent. per annum upon the amount of the capital remaining due at the time of paying each eighteenth."

That the said Mr. and Mrs. —— submit to the resolution exacting the payment of the annual contribution of six dollars per share, and accept the delays of one to eighteen years which are fixed for the payment of their debt, because they consider that these delays are necessary to enable them to pay the said debt while paying the contribution.

414 The said Alonzo Morphy has agreed with the said Mr. and Mrs. —— that their debt shall be payable in eighteen years, but this contract is made under the expressed reservation of all the rights and privileges of the Consolidated Association resulting from the act of —, and especially under reservation of the mortgage granted by said act upon the properties therein described by the said Mr. and Mrs. ——, as well to secure the said shares of stock as to secure the payment of the obligation subscribed by them, the said A. Morphy intending merely to assure to the said Mr. and Mrs. —— terms and delays for the payment of their said obligations, and to determine the manner of sale of the properties in case of seizure, according to the stipulations hereinafter to be made, but without operating any novation whatever.

In consequence, the said Mr. and Mrs. —— bind themselves to pay and reimburse the aforesaid sum of — to said Consolidated Association, with interest upon this sum at the rate of

415 seven per cent. per annum, in one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, and eighteen years from date.

For this purpose, and to secure the obligation above taken, the said Mr. and Mrs. —— have furnished eighteen bonds or obligations, subscribed by them jointly and solidarily, dated this day, and made to the order of the cashier of the said Consolidated Association.

The first, for the sum of —, composed, 1st, of —, the eighteenth of

the aforesaid capital, and, 2d, of — interest, at seven per cent. per annum, upon the whole of this capital, and payable punctually ——.

The second, for the sum of —, composed, 1st, of —, the eighteenth of the aforesaid capital, and, 2d, of — interest, at seven per cent. per annum, upon all of the balance due of this capital, and payable punctually ——.

The third, for the sum of —, composed, 1st, —, the eighteenth of said capital; 2d, and of — interest, at seven per cent. per annum, upon all of the balance due of this capital, and payable punc-
416 tually ——.

The fourth, for the sum of —, composed, 1st, — the eighteenth of said capital; 2d, and of — interest, at seven per cent. per annum, upon all of the balance due on this capital, and payable punctually ——.

The fifth, for the sum of —, composed, 1st, —, the amount of an eighteenth part of said capital; 2d, and of —, the amount of interest, at seven per cent. per annum, upon all of the balance due upon the capital, and payable punctually ——.

The sixth, for the sum of —, composed, 1st, —, the amount of an eighteenth of said capital; 2d, and of —, the amount of interest, at seven per cent. per annum, upon all of the balance due upon the capital, and payable punctually ——.

The seventh, for the sum of —, composed, 1st, —, amount of an eighteenth of said capital; 2d, and of — interest, at seven per cent. per annum upon all of the balance due upon the capital, and payable punctually ——.

The eighth, for the sum of —, composed, 1st, of —, an eighteenth of said capital; 2d, and of — interest, at seven per cent. per annum, upon all of the balance due upon this capital, and payable punctually the ——.

417 The ninth, for the sum of —, composed, 1st, of —, an eighteenth of said capital; 2d, and of — interest, at seven per cent. per annum, upon all of the balance due upon the capital, and payable punctually the ——.

The tenth, for the sum of —, composed, 1st, of —, an eighteenth of said capital; 2d, and of — interest, at seven per cent. per annum, upon all of the balance due upon the capital, and payable punctually the ——.

The eleventh, for the sum of —, composed, 1st, of —, an eighteenth of said capital; 2d, and of — interest, at seven per cent. per annum, upon all of the balance due upon the capital, and payable punctually the ——.

The twelfth, for the sum of —, composed, 1st, of —, an eighteenth of said capital; 2d, and of — interest, at seven per cent. per annum, upon all of the balance due upon the capital, and payable punctually the ——.

The thirteenth, for the sum of —, composed, 1st, of —, an eighteenth of said capital; 2d, and of — interest, at seven per cent. per annum, upon all of the balance due upon this capital, and payable punctually the ——.

The fourteenth, for the sum of —, composed, 1st, of —, an eight-

eenth of said capital; 2d, and of — interest, at seven per cent. per annum, upon all of the balance due upon the capital, and payable punctually the ——.

The fifteenth, for the sum of —, composed, 1st, of —, an eighteenth of said capital; 2d, and of — interest, at seven per cent. per
418 annum, upon all of the balance due upon the capital, and payable punctually the ——.

The sixteenth, for the sum of —, composed, 1st, of —, an eighteenth of said capital; 2d, and of — interest, at seven per cent. per annum, upon all of the balance due upon the capital, and payable punctually the ——.

The seventeenth, for the sum of —, composed, 1st, of —, an eighteenth of said capital; 2d, and of — interest, at seven per cent. per annum, upon all of the balance due upon this capital, and payable punctually the ——.

And the eighteenth, for the sum of —, composed, 1st, of an eighteenth of said capital; 2d, and of — interest, at seven per cent. per annum, upon all the balance due upon this capital, and payable punctually the ——.

Which obligations, payable at the counting-house of the said Consolidated Association, in this city, have been delivered to the said Alonzo Morphy, in his official capacity, after having been signed and paraphed *ne varietur* by the undersigned notary, to identify them as well with these presents as with the act before cited of —— before ——.

The said Mr. and Mrs. —— bind themselves, besides, form-
419 ally by these presents, jointly and solidarily, to pay to the said Consolidated Association, at its counting-house, in this city, punctually on the first of June of the year one thousand eight hundred and forty-nine, and punctually on the first of June of each of the sixteen years which follow, a contribution of six dollars per share which they possess in the capital stock of the said corporation—that is to say, the sum of —— on the first of June punctually of each of the aforesaid years, the number of their shares being ——.

It is expressly agreed—

1st. That in case the said Mr. and Mrs. —— do not faithfully fulfill each of the obligations which they contract by these presents no new delay shall be granted them, and the commissioners and directors of the said Consolidated Association shall proceed immediately against the properties mortgaged by the before-cited act of — before ——, which properties shall be seized and sold in the following manner, to wit: For cash for all sums due and all sums not due upon the same terms allowed them without appraisement.

420 2d. And that nothing in the present act shall be considered as affecting the rights, privileges, remedies at law, and mortgage of the said Consolidated Association resulting in its favor by the act before cited of — before ——.

Which act remains in full force and virtue, nothing therein being diminished or changed by these presents, except that which has been stipulated above relative to the delays allowed and to the manner of sale in the event of seizure.

It is, moreover, expressly agreed that in case of payment by anticipation of the obligations above furnished none of the interest stipulated in the body of said obligation shall be remitted to the said Mr. and Mrs. —— for the remaining unexpired term.

Which act, made and passed in my office, in New Orleans, the day, the month, and the year aforesaid, in presence of Messrs —— ——, competent witnesses, who have signed, with the appearers and the notary, after reading the same.

421 *The Resolutions of the Board of Directors Accepting the Provisions of the Act of* 1847.

1st. Resolved, That, according to the legislative act approved the 6th of April, 1847, a contribution of six dollars per share shall be paid by each stockholder of the Consolidated Association on the 1st of June, 1849, and on the first of June of each of the sixteen ensuing years.

2. Resolved, That the sums now due on stock loans, including the interest due, shall be divided into eighteen equal annual instalments, the payment of the first to take place, at furthest, the first of June, 1848, and the payment of the others, at furthest, on the first of June of each of the seventeen ensuing years; that the interest on said payments, instead of being in the form of a discount of 6½ per cent., payable in advance, shall be added to the portion of the capital due each year, at the rate of 7 per cent., and shall be included in each of the eighteen bonds or obligations to be subscribed by the stockholders.

3. Resolved, That as soon as the accounts of the stockholders shall have been prepared the said stockholders shall be invited by the cashier to come, within the shortest delay, in order to subscribe all the necessary bonds and acts to entitle them to the above-granted delays.

4. Resolved, That the cashier be requested to annex to the letter by him to be addressed to the stockholders copies of the last law, of the report, and of the present resolutions.

422 *The Statement of the Indebtedness of the Various Defendants Whose Case is now on Trial, as it Appears from the Books of the Association, Marked XXX.*

Indebtedness (on account of their stock) of sundry stockholders of the Consolidated Association of the Planters of Louisiana.

Names.	Stock.			
	No. shares.	Amount @ $500 each.	Amount paid.	Amount due & unpaid.
Hermann Meyer Stock secured by mortgage on a plantation in the parish of Ouachita, measuring about 9 arpents front on the Bayou de Siard by 40 arpents in depth, containing about 500 arpents.	10	$5,000	$1,020	$3,980
Hermann Meyer Stock secured by mortgage on a plantation in the parish of Ouachita, measuring 6 arpents front on each side of the Bayou de Siard by 40 arpents in depth, containing about 480 superficial arpents.	16	8,000	1,632	6,368
Hermann Meyer Stock secured by mortgage on a plantation measuring 8 arpents front on each side of the Bayou de Siard by 40 arpents in depth, containing about 640 arpents.	20	10,000	2,040	7,960
423 Bernard Lemann, Meyer Lemann, Richard T. Hanson Stock secured by mortgage on a plantation in the parish of Assumption, about 6 miles below Donaldsonville, measuring 6 arpents front on the left bank of Bayou Lafourche by 80 arpents in depth, the side lines opening 19°, containing 1,000 arpents.	124	62,000	12,648	49,352
Heirs of P. Landreaux Stock secured by mortgage on a lot of ground in the city of New Orleans, in square bounded by Baronne, Perdido, Dryades, and Union streets, designated by the No. 4. Said lot forms a trapezium, and measures (French measure) 33 feet 7 inches front on Baronne street by 115 ft. deep on side next Perdido street, and 111 feet on the side next Union street and 33 feet in the rear, with buildings, known as Nos. 86 and 88 Baronne street; also a lot of ground forming the corner of Perdido and St. John streets, in square bounded by those streets, Poydras, and Circus streets, known as 100 Perdido street; has a kitchen building on it.	202	101,000	20,604	80,396

Statement of Indebtedness—Continued.

Names.	Stock.			
	No. shares.	Amount @ $500 each.	Amount paid.	Amount due & unpaid.
Charles Getzinger	109	54,500	11,118	43,382
Secured by mortgage on a plantation in the parish of Jefferson, about 4 miles above the city of New Orleans, measuring 11 arpents, more or less, front on the Mississippi river, right bank, by 80 arpents in depth, widening in the rear to 17 arpents, containing about 1,140 superficial arpents, bounded above by lands of Fazende and below by lands formerly belonging to Wm. C. Micou.				
424				
Citizens' Bank of La	47	23,500	4,794	18,706
Stock secured by mortgage on a plantation in the parish of Iberia, about four miles below the town of New Iberia, measuring 27 arpents front on Bayou Teche, right bank, by 40 arpents in depth; also 19⅓ arpents front on the double concession, and 660 superficial arpents, about 20 arpents from the principal body of land.				
Mrs. George Josiah Lord	22	11,000	1,584	9,416
Stock secured by mortgage on a lot of ground, measuring 60 feet front on Bourbon street by 170 feet in depth, with the buildings and improvements thereon, in the square bounded by Bourbon, Custom-house, Dauphine, and Bienville streets, known as Nos. 41 and 43 Bourbon street.				
B. Beoubay	57	28,500	5,814	22,686
Stock secured by mortgage on a lot of ground, with the buildings and improvements thereon, forming the corner of Royal and Hospital streets, measuring 46 feet 10 inches front on Royal street by 90 feet in depth and front on Hospital street, in the square bounded by Royal, Hospital, Chartres, and Ursulines streets.				
425				

Defendants' List of Evidence Offered at Hearing Jan'y 29, 1887.

U. S. Circuit Court, Eastern District of La.

WILLIAM CRESSEY
vs.
THE CONSOLIDATED ASSOCIATION OF PLANTERS *et al.* } No. 10432.

List of evidence introduced upon final hearing by defendants, Hermann Meyer, Bernard Lemann, Meyer Lemann, and Richard T. Hanson, Padro Landreaux, and Marie Landreaux, Charles Gitzinger, The Citizens' Bank of Louisiana, B. Beoubay, and Mrs. George Josiah Lord, respectively, the exhibits annexed to their answers in this suit.

And on behalf of all the said defendants the admission made by the plaintiff in the document marked A and filed this day, and on behalf of Mrs. George Josiah Lord the record of the proceedings in the suit of the president and directors of the Consolidated Association of the Planters of Louisiana *vs.* George J. Lord, No. 2662 of the civil district court for the parish of Orleans.

426 "Comparative statement of the affairs of the Consolidated Association Bank from the return made to the board of currency." Senate Journal, p. 46.

Defendants' Evidence.

Exhibits annexed to the answers of the several defendants. See pages 161 to 234 inclusive, of this transcript.

Admissions made by the plaintiff. See page 237 of this transcript.

Record of the proceedings in the suit of the president and directors of the Consolidated Association of the Planters of Louisiana *vs.* George J. Lord, No. 2662 of the civil district court for the parish of Orleans.

Petition.

427 To the honorable the judges of the civil district court for the parish of Orleans:

The petition of the president and directors of the Consolidated Association of the Planters of Louisiana, a body corporate and duly incorporated under the laws of this State and domiciled in New Orleans, respectfully represents—

That said Consolidated Association of the Planters of Louisiana is one of the banks known to our laws by the denomination of "property banks;" that its capital stock subscribed was not paid in cash by the shareholders; that in lieu thereof the stockholders furnished a mortgage on property which formed a security by virtue whereof the bonds of the State of Louisiana were issued in favor of said association, which was thereby enabled to carry on the banking business as contemplated in its charter. Petitioners aver that on or about March 14, 1850, George Josiah Lord, a resident of New Orleans, be-

came a stockholder in said association for twenty-two shares of its capital stock, each share being for five hundred dollars; that on March 14, 1850, said Lord purchased from the Mechanics' & Traders' Bank of New Orleans the following-described property, to wit: A certain lot of ground, with all the buildings and improvements thereon, rights, privileges, customs, ways, servitudes, and appurtenances thereunto belonging or in anywise appertaining, situate in the municipality number "one" of this city, in the square bounded by Bourbon, Custom-House, Bienville, and Dauphine streets, and measuring sixty feet front on said Bourbon street by one hundred and seventy-
eight feet in depth on the side line next to Bienville street
428 and one hundred and twenty feet in depth on the side line next to Custom-House street, and thence extending, at right angles, thirty feet towards said Custom-House street; also twenty-two shares (of the sum of five hundred dollars each) in the capital stock of the "Consolidated Association of the Planters of Louisiana," secured by mortgage on the above-described property agreeably to the charter of the said institution, being the special mortgage granted by the late Mrs. Celeste Chalot (widow of Peter L. B. Duplessis) by an act, before Octave de Armas, a notary public, in New Orleans, on Oct 20, 1836, in favor of the president and directors of the Consolidated Association of the Planters of Louisiana, to secure the sum of eleven thousand dollars, amount of the above-mentioned twenty-two shares in the capital stock of said association, and interest; that said mortgage was assumed by said Lord; that it was expressly stipulated in said act of Oct. 20, 1836, that said mortgage for $11,000 (eleven thousand dollars) was granted to secure the capital and interest of the State bonds aforesaid up to that amount, according to the charter and rules of said association, all of which more fully appears by reference to said acts, authentic copies whereof are herewith filed; that the bonds issued by the State of La. as aforesaid having become due and not having been paid at maturity, said bank being in liquidation and its assets being insufficient to meet its liabilities without calling on its stockholders for a contribution proportioned to the number of shares held by each, and the bank having failed to pay at maturity the
capital and interest of the bonds issued by the State as afore-
429 said, the Legislature, notwithstanding the State had the power and right to force the immediate sale of mortgaged property, passed an act on April 6, 1847, authorizing the extension of payment of said bonds, but requiring that a fund be raised to provide for the payment thereof by making it the duty of the managers and directors of said bank to require such annual or periodical payment from the stockholders, to be divided in equal instalments, running from one to seventeen years, as would accumulate a fund sufficient to meet the obligations of the State for account of said bank; that, in accordance with said statute, said managers and directors, on or about June 5, 1847, called in a contribution, ($6) six dollars on each share of stock, to be paid annually 1 day of June of each year, being one hundred and thirty-two ($132) dollars per annum on the twenty-two shares of stock herein referred to.

That the first contribution of one hundred and thirty-two ($132)

dollars was paid June 1, 1849, by the then holder of said shares, and that the contributions of one hundred and thirty-two ($132) dollars per annum from 1850 to 1860, inclusive, were paid by said Lord, who had become the holder and owner of said twenty-two shares as aforesaid, but that said Lord, notwithstanding amicable demand, has refused and refuses to pay the annual contributions which have since become due, to wit, the sum of one hundred and thirty-two ($132) dollars which became due June 1, 1861, and the sum of one hundred and thirty-two ($132) dollars which became due on the first of June of each succeeding year up to and inclusive of June
430 1, 1865, making an aggregate of ($660) six hundred and sixty dollars, for which sum said Lord is indebted to your petitioner, with interest at 8% per annum on one hundred and thirty-two ($132) dollars from June 1, 1861, and with like interest on like amount from the 1 June, 1862, and with like interest on like amount from the 1 June, 1863, and with like interest on like amount from the 1 June, 1864, and with like interest on like amount from the 1 June, 1865, until paid. Petitioners further represent that in 1878, there still remaining outstanding a large amount of bonds of the State issued to the said association, the Legislature of La., by act of March 30, 1878, made further provision for the liquidation of said bank, and enacted by said statute that the president and directors of said association should levy and collect annually from the stockholders thereof such an assessment as (after paying expenses of liquidation) will provide for the purchase and surrender to the State in each year of ($\frac{1}{10}$) one-tenth of the consolidated bonds of the State which have been or may be issued for the benefit of said association and for the payment of the interest thereon; that the president and directors of said association only obtained charge of said bank on or about June 5, 1880, and said institution having been in the hands of receivers appointed by the U. S. circuit court, district of La., from 1876 to June 5, 1880, and that upon so obtaining charge said president and directors forthwith proceeded to the discharge of the duty imposed on them by said statute, and on July 13, 1880, and pursuant to said statute, levied an assessment of forty ($40) dollars per share on each and every share of the capital stock
431 of said association, payable in cash within 30 days from Sept. 1, 1880; that by reason thereof the said Lord became liable to petitioners in the sum of eight hundred and eighty ($880) dollars, with interest at 8% per annum from October 1, 1880, he being, as aforesaid, the holder of twenty-two shares of stock, and that said amount of eight hundred and eighty ($880) dollars has been due since October 1, 1880, and remains unpaid, and said Lord refuses to pay the same, notwithstanding amicable demand.

Wherefore petitioners pray that said George J. Lord may be cited to answer hereto, and that after due proceedings he be condemned to pay petitioners the sum of fifteen hundred and forty dollars, with 8 per cent. interest per annum on one hundred and thirty-two ($132) dollars from June 1, 1861, and on a like sum from the 1 June, 1862, and on a like sum from the 1 June, 1863, and on a like sum from the 1 June, 1864, and on a like sum from the 1 June, 1865, until

paid, and on eight hundred and eighty ($880) dollars from Oct. 1, 1880, until paid, and costs — the whole, with mortgage on the property hereinbefore fully described; and petitioners pray for all other just and equitable relief.

(Signed) E. W. HUNTINGTON,
" BAYNE & RENSHAW,
Att'ys for Pet'rs.

A true copy.
[SEAL.] (Signed) ALEX. T. DONOVAN, *D'y Cl'k.*

432 *Petition of Intervention. Filed Jan'y* 11, '82.

Civil District Court.

THE PRESIDENT AND DIRECTORS OF THE CONSOLIDATED ASSOCIATION OF THE PLANTERS OF LA.
vs.
GEORGE J. LORD. } No. 2662.

The petition of the State of Louisiana, herein represented by J. C. Egan, attorney general, respectfully represents that she issued her bonds in favor of the president and directors of the Consolidated Association of the Planters of Louisiana in the sum of two million five hundred thousand ($2,500,000.00) dollars.

Petitioner further represents that in accordance with the terms of act No. 19, p. 30, of 1828 she has an interest in this suit; that she has a right of pledge in and to the mortgages on property given by the shareholders of the Consolidated Association of the Planters of La. for stock subscribed for by them in the said Consolidated Association of the Planters of La., said mortgages having been pledged to her and held by the said Planters' Association for the security and guarantee of the payment of the principal and interest of the said two million five hundred thousand ($2,500,000.00) dollars in bonds issued by her to the said association.

Petitioner further alleges that the bonds above referred to
433 have never been paid by the Consolidated Association of the Planters of La., and that the said bonds, converted into other interest-bearing bonds by act of the Legislature of Louisiana, are evidence of indebtedness of the State of La., and that she is therefore interested in the above described and referred to mortgages as pledgee of the same.

Petitioner further adopts all the allegations of plaintiffs herein and joins them in their prayer for judgment against defendant herein.

Wherefore petitioner prays that she be allowed to intervene herein, and that copies of this petition of intervention be made and served on the Consolidated Association of the Planters of Louisiana, through their proper officer, George J. Lord, defendant herein, W. T. Davis, W. S. Benedict, and Thomas Layton, executors of the estate of Robert Y. Charmbury, interveners herein, and upon any other parties herein interested, and after due proceedings that there

be judgment in favor of the president and directors of the Consolidated Association of the Planters of Louisiana, as prayed for by them in their petition, and against George J. Lord and W. T. Davis, W. S. Benedict, and Thomas Layton, executors of the estate of Robert Y. Charmbury, and for costs and for all general relief in the premises.

J. C. EGAN,
Att'y General.

Order.

434 Let this petition of intervention and 3rd opposition be filed and served as prayed for and according to law.

New Orleans, Jan'y 11, 1882.

(Signed) N. H. RIGHTOR, *Judge.*

Citation. Issued Jan'y 18th, 1882.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

PRESIDENT AND DIRECTORS OF THE CONSOLIDATED ASSOCIATION OF THE PLANTERS OF LA.
versus
GEORGE J. LORD. } No. 2662.

Consolidated Association of the Planters of Louisiana, through its proper officer, New Orleans:

You are hereby summoned to comply with the demand contained in the petition of intervention, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, Henry L. Lazarus, judges of the said court, this 18th day of Jan'y, in the year of our Lord 1882.

Court-house, opposite Jackson Square.

[SEAL.] ALEX. T. DONOVAN,
Deputy Clerk.

435 *Sheriff's Return.*

Received January 19, 1882, and on the 20th day of January, 1882, I served a copy of the within citation and accompanying petition of intervention on the Consolidated Association of the Planters of Louisiana, plaintiffs herein, through R. W. Adams, its president, in person.

Returned same day.

J. E. SIEKFORT,
D'y Sheriff.

Sheriff's fee, $1.50.

Copy of Exception and Answer.

Civil District Court for the Parish of Orleans, Division D.

PRESIDENT AND DIRECTORS OF THE CONSOLIDATED ASSOCIATION OF PLANTERS, &c.,
v.
GEORGE JOSIAH LORD. } No. 2662.

Now comes George Josiah Lord, of the city of New Orleans, defendant in the above-entitled cause, and excepts to the demand and petition herein filed and exhibited against him, and for cause
436 of exception he respectfully shows and pleads—

That by a final judgment of the late district court in and for the first judicial district of the State of Louisiana, rendered on the 12, signed on the 17, November, 1842, at the instance and suit of the State of Louisiana, the charter of "The Consolidated Association of the Planters of Louisiana," which was a banking corporation established and existing under and by virtue of the laws of the State of Louisiana, was declared and was decreed to be forfeited, and thencefor- the said association ceased to exist as a corporation, and all its powers as such terminated by the said decree of forfeiture.

That by act No. 100 of the Legislature of 1847 a plan of liquidation was devised, to be submitted to the stockholders of the said association, by which the State and the stockholders had equal representation in the management and administration of the affairs of the said association; that in accordance with this act, and immediately after its passage, a meeting of the stockholders was called and was held, at which the said plan of liquidation was approved and accepted by a large majority, and the said liquidation was organized. The bonds of the State issued in aid of the said association were extended, as provided in said —; the indebtedness of the several stockholders was also extended and divided into annual instalments, the last of which was payable in 1865. New obligations were entered into by a large number of the stockholders for the payment of these several instalments, and an annual assess-
437 ment of six dollars per share for seventeen years, the last to be paid in 1865, was made and was approved and accepted by a large number of the said stockholders.

That the stockholders as such have never accepted nor have they assented to any other plan of liquidation than that organized under and by authority of the act of 1847 and the amending act No. 113 of 1853.

That there is no such organization nor is there any such judicial being as "the president and directors of the Consolidated Association of the Planters of Louisiana," because that association ceased to have any corporate existence by the decree of forfeiture of the charter in 1842, and if the persons styling themselves such president and directors have any power or authority to appear in court or to stand in judgment touching the business and affairs of the said association, which defendant does not admit, but does, by way of

protestation, specially deny, such power cannot be exercised by them otherwise than as natural persons, and they cannot sue or be sued otherwise than in their proper and individual names.

Wherefore defendant prays that this exception be maintained, and that the demand and petition herein filed and exhibited against him be dismissed with costs.

Should the foregoing exception be overruled, then and not otherwise the said George Josiah Lord, defendant, for answer to the demand and petition herein filed and exhibited against him, denies all and singular the statements and allegations in the said petition contained.

438 Further answering, defendant shows and pleads that "The Consolidated Association of the Planters of Louisiana" was a banking corporation established and organized by and under a charter granted by two acts of the Legislature, the one passed in 1827, the other in 1828, by the terms of which said last-mentioned act the charter was to expire on the 30 June, 1843; that the stockholders of the said association were required to grant in favor of the said association mortgages on real estate and slaves to secure the shares of stock taken by them respectively, and such loans as they might be entitled to and might obtain from the said association; that the State, in order to enable the said association to obtain the capital requisite for its business, issued its bonds in favor of said association, transferable by the indorsement of the president and cashier, to the amount of two millions five hundred thousand dollars, bearing interest at five per cent., payable semi-annually, the reimbursement of which was secured by a deposit in the office of the association of all the hypothecary obligations subscribed by individuals in favor of said association.

That the said bonds were due and exigible at different periods, the latest on the 30 June, 1843; that, by act of 1835, the Legislature authorized the board of directors to postpone the payment of the bonds which were to mature in 1838 and in 1843 to the 30 June, 1848, and by the said act two years were allowed to the said association after the 30 June, 1848, to liquidate and close its affairs.

439 That in the year 1842 the State of Louisiana brought suit against the said association in the late district court for the first judicial district of the State of Louisiana, No. 21646 of the docket of said court, in which such proceedings were had that a final judgment was rendered on the 12 and signed on the 17 day of November, 1842, declaring and decreeing the charter of the said association to be forfeited.

That the Legislature, by act No. 92 of 1843, declared that the assets of the Consolidated Bank of the Planters of Louisiana "are and shall remain in the possession and under the exclusive management of the State of Louisiana until final payment of the bonds is sued in its favor."

That subsequently the Legislature, by act No. 100 of 1847, provided for the liquidation of the affairs of the said association by a board composed of three members appointed by the State and an equal number to be elected by the stockholders; that, pursuant to

the said act, immediately after its passage, a meeting of the stockholders was called and was held, and at that meeting the plan of liquidation provided by the said act was approved and accepted by a majority of the stockholders; the liquidation was fully organized; the bonds of the State issued in aid of the association were extended; the indebtedness of the several stockholders for loans was also extended, and was divided into annual instalments, the first payable in June, 1848, the last in June, 1865. New obligations were executed by a majority of the stockholders for the pay-
440 ment of these several instalments, and an annual assessment of six dollars a share for seventeen years, the last payable in June, 1865, was made and was accepted by a large number of the stockholders.

Defendant shows and pleads that he was not an original stockholder of the said association, and that he was not at any time indebted to the said association; that in the month of March, 1850, he purchased and acquired from the late Mechanics' and Traders' Bank the property in the petition mentioned and described, for which he paid the full value; that the said property was mortgaged by the Widow Duplessis in favor of the said association, by act before De Armas, notary, of date 20 October, 1836, to secure a loan granted to her by the said association, and also to secure twenty-two shares of the stock of the said association held and owned by her, which shares defendant acquired at the time he purchased the said property; that at the time of his said purchase the said stock was of no value, the said corporation having ceased to exist and being in liquidation, as already hereinbefore stated; that the purchase of the said stock, which was a mere appendage to the property, did not impose upon defendant the responsibilities of an original stockholder, and that he did not contract nor did he incur any liability with respect to the said association other than such as may be legally deduced from the facts that he assumed, in the act by which the said property and stock were conveyed to him, the mortgage of 20 October, 1836, granted in favor of the said association by Widow Duplessis; that he acquired with the property so mortgaged the twenty-two
441 shares of stock, and that he paid some of the annual assessments of six dollars per share without having in any manner obligated himself so to do; and defendant avers that if liability can be legally deduced from these facts, which he does not admit, but does specially deny, such liability is not other than that of a third possessor of mortgaged property, and could be enforced only by the hypothecary action.

Defendant shows that the Legislature, by act No. 38 of 1866, extended the payment of the bonds of the State issued in favor of said association for a period of ten years, "and no more," and authorized the prolongation of the liquidation of the said association "until the maturity of the payment of the bonds and coupons thus extended;" that defendant in no way authorized or assented to such extension and prolongation, and his rights have not been impaired and his obligations have not been increased in any manner by this action of the Legislature.

Defendant shows that the State of Louisiana, pursuant to the act No. 3 of 1874 has funded the greater part of the bonds of the State issued in aid of the said association, and issues to the holders of said bonds new bonds of the State at the rate of sixty cents in new bonds for one dollar of the old bonds, such new bonds having forty years to run from the first of January, 1874, and bearing interest at seven per cent. per annum, payable semi-annually, instead of the five per cent., as stipulated in the old bonds; that the said new bonds and such of the old bonds as have not been funded and the in-
442 terest which has accrued and is to accrue on the same constitute part of the general bonded debt of the State of Louisiana; that defendant, like every other tax-payer of the State, is bound to contribute annually by taxation to the payment of said debt in principal and interest, and that defendant is not bound otherwise to pay any part of said debt.

Defendant shows that the mortgage granted by Widow Duplessis did not undertake or purport to secure any other bonds or obligations than those specifically set forth and described in the said act of mortgage and the acts of the Legislature of 1827, 1828, by which the charter was granted to the said association; that by the funding of the said bonds and the issue of the new bonds in their stead the said bonds originally issued by the State have been novated and extinguished, and the mortgages given to secure the reimbursement of the same have also been extinguished by the said novation and extinguishment of the said original bonds; and defendant specially pleads such novation and extinguishment of the original bonds issued in favor of said association as an extinguishment of the mortgage, of date 20 October, 1836, granted by Widow Duplessis in favor of said association and of the assumption of that mortgage by defendant.

That more than forty years have elapsed since the date of the mortgage so granted by Widow Duplessis on the 20 October, 1836; that more than thirty years have elapsed since the date of the assumption of that mortgage by defendant in March, 1850; that his said assumption has not been reinscribed at any time, and that the obligation originally created and evidenced by the said mort-
443 gage, whatever may have been its extent and intendment, and the assumption by defendant, whatever may have been the legal effect of said assumption, have ceased and become *extent* by the lapse of more than thirty years; and defendant specially pleads and relies upon the prescription of thirty years as a complete bar to any action to enforce the said original mortgage or his assumption of the same.

Defendant shows that by the constitution of the State of Louisiana, which was in force at the time that the act No. 38 of 1866 was passed, it was declared that "no law shall be revived or amended by reference to its title, but in such case the act revived or section amended shall be re-enacted and published at length," and no previous act of the Legislature was or could have been legally revived or amended by the said act of 1866.

That in July, 1876, after the expiration of the extension provided

for by the act No. 38 of 1866, a receiver of the said association was appointed by the late superior district court for the parish of Orleans, and subsequently receivers were appointed by the circuit court of the United States, sitting at New Orleans; that, "owing to the neglect of duty and other unauthorized acts of officers of the State," the assets of the said — were taken out of the possession of the liquidators, and were detained by the said receivers under control of the said circuit court for nearly four years—that is, until the month of June, 1880; that the said assets, at the time they were taken into possession by the said receivers, were of the value of about
444 two hundred thousand dollars, and if they had been properly administered and applied they would have sufficed to discharge all the then outstanding bonds of the State issued in favor of the said association, at the rate at which they were selling on the market; that the administration by said receivers was extravagant, illegal, and wasteful, and the said assets were in great part expended and lost in fees, charges, and outlays which were improperly and unnecessarily incurred; that the stockholders of the said association are not otherwise liable than in so far as they may be legally bound for the reimbursement of the bonds of the State issued in favor of the said association, and that their liability cannot extend beyond the balance that may be required for such reimbursement, after deducting the amount and value of the assets unlawfully taken into possession and unlawfully expended by the said receivers, by reason of the neglect of duty and other unauthorized acts of the officers of the State in whose custody the said assets were and from whose possession and custody the said assets were so taken.

Defendant shows that the constitution of the State of Louisiana, which was in force at the time the act No. 20 of 1878 was passed, declared that "no law shall be revived or amended by reference to its title, but in such case the revised or amended section shall be re-enacted and published at length;" that the said act of 1878 did not revive any previous act of the Legislature, nor does it confer upon the plaintiffs in this suit the power of liquidation, which by the acts of 1847 and 1853 and by compact between the State
445 and the stockholders vested in liquidators, to be composed of an equal number of persons chosen by the State and the stockholders, respectively.

That the plaintiffs have no power or authority to make, demand, and sue for the assessment of forty dollars per share demanded in this suit; that the said assessment is based upon alleged payments of interest upon the consolidated bonds issued in lieu of the original bonds of the State, and to provide a fund for the payment and extinction, in the space of ten years, of the said consolidated bonds. Defendant shows that neither the original mortgage granted by Widow Duplessis nor the assumption of that mortgage by himself ever contemplated or was made with reference to any such obligations; that the said consolidated bonds are not secured by the said mortgage nor by the assumption of that mortgage; that he is in no manner a party to the said consolidated bonds, and that the plaintiffs have no right and no power to require him to pay an assess-

ment for the purpose of extinguishing these obligations of the State within ten years which the State is not bound to pay until the year 1914, or forty years after the first of January, 1876, as stipulated in said bonds.

Defendant shows that the property mortgaged to the association by the stockholders, as required by the charter, consisted of landed estate and slaves, and that the value of the slaves so mortgaged exceeded one million of dollars; that the constitution of 1864, before the adoption of the 13 amendment to the Constitution of the United States, abolished slavery in Louisiana; that this con-

446 stitution was accepted by the people of Louisiana by acquiescence, and by this action of the State and the people there remained only the landed estate as security for the reimbursement of the outstanding bonds of the State secured by said mortgages; that it is neither just nor lawful to throw upon the owners of landed estate alone the entire burden which originally rested equally, in proportion to value, upon the owners of the slaves mortgaged, and that it would be contrary to the original contract and understanding between the State and the association and the stockholders to make an assessment on the shares of stock for any purpose without proper allowance and deduction for the relative value of the slaves mortgaged and the number of shares represented by the value of said slaves,

Defendant shows that the constitution of 1879 had gone into effect and was in full force before the assets of the association had been released from the custody and control of the circuit court of the United States and from the possession of the receivers appointed by said court; that the act of 1878 did not and could not begin to take effect until the said assets were so released—that is, until the month of June, 1880; that by the said constitution, article 56, the State of Louisiana is forbidden to carry on the business of any corporation or association; that the act of 1878 is an attempt by the State, through persons of its selection and appointment, to carry on the entire business—that is, the liquidation of the said association and the adoption of the said constitution before the said act of 1878 took effect and went into operation abrogated the said act.

447 Defendant shows that the five instalments of $132 each, being assessments of six dollars per share annually on the 22 shares of stock standing in the name of defendant demanded in the petition, became due and exigible, as is alleged in the petition, on the first day of June, 1861, and on the first day of June of each succeeding year, to and including the year 1865; that more than nineteen years have elapsed since the first of said instalments became due and exigible, and more than fifteen years have elapsed since the last of said instalments became due and exigible, and that the same are now extinguished and prescribed by the lapse of time, and defendant does now specially plead and rely upon the prescription of five years and of ten years as a complete bar to so much of the demand of plaintiffs against him as is based upon the said five instalments.

Defendant specially denies, for the reasons and upon the grounds

herein set forth, that either he or his property is in any manner liable to the demand of plaintiffs or any part thereof, as set forth in their petition.

Wherefore, the premises considered, defendant prays that the demand of plaintiffs be rejected and their suit and petition be dismissed, and defendant be hence discharged with costs; and he prays for general relief in the premises, and as in duty, &c.

N. O., 30 March, 1881.

(Signed) R. H. MARR,
J. LAVERGNE,
Att'ys for Defendant.

See also pages 202 and 208 of this transcript.

448 "Comparative statement of the affairs of the Consolidated Association banks from the return made to the board of currency." Senate Journal, p. 46. See page 374 of this transcript.

Decree. Entered and Filed April 5, 1887.

U. S. Circuit Court, Eastern District of Louisiana. In Equity.

WILLIAM CRESSEY
vs.
THE CONSOLIDATED ASSOCIATION OF PLANTERS OF LA. *et al.* } No. 10432.

This cause came on to be heard at this term as against the following-named defendants, made parties by the amended bill, viz: Herman Meyer, Bernard Lemann, Meyer Lemann, Richard T. Hanson, Pedro Landreaux, Marie Louise Landreaux, Charles Gitzinger, Barthelemy Beaubay, Mrs. George Josiah Lord, and the Citizens' Bank of Louisiana, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that said complainant's bill against said defendants be dismissed, but retained as against the other defendants for further hearing.

New Orleans, April 5, 1887.

(Signed) DON A. PARDEE,
Circuit Judge.

449 *Motion and Order for Appeal. Entered and Filed May* 4, 1887.

U. S. Circuit Court, Eastern District of Louisiana. In Chancery.

WILLIAM CRESSEY
vs.
CONSOLIDATED ASSOCIATION OF THE PLANTERS OF LOUISIANA. } No. 10432.

Now come William Cressey, complainant herein, and the State of Louisiana, by M. J. Cunningham, her attorney general, said State having filed an intervention herein *pro inter esse suo*, and suggesting that that there is error to their prejudice in the final decree entered

herein against them on the 5th day of April, 1887, dismissing the bill of complaint herein so far as Herman Meyer, Bernard Lemann, Meyer Lemann, Richard T. Hanson, Pedro Landreaux, Marie Louise Landreaux, Charles Getzinger, Berthelemy Beaubay, Mrs. Geo. Josiah Lord, and the Citizens' Bank of Louisiana are concerned, and in favor of said defendants, and that movers desire to take an appeal from said decree to the Supreme Court of the United States with supersedeas:

It is ordered that an appeal be granted to movers to the Supreme Court of the United States, returnable on the first day of the next term thereof, to operate as a supersedeas upon their giving bond in the sum of five hundred dollars according to law.

(Signed) DON A. PARDEE, *Judge.*

Service accepted.

(Signed) ROUSE & GRANT,
Of Counsel for said Def't.

450 *Bond for Appeal. Filed* 4 *May*, 1887.

UNITED STATES OF AMERICA:

Know all men by these presents that we, William Cressey and the State of Louisiana, principals, and Francis B. Lee, surety, are held and firmly bound, jointly and severally, unto Hermann Meyer, Bernard Lemann, Meyer Lemann, Richard T. Hanson, Pedro Landreaux, Marie Louise Landreaux, Charles Getzinger, Berthelemy Beaubay, Mrs. George Josiah Lord, and the Citizens' Bank of Louisiana in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Herman Meyer, Bernard Lemann, Meyer Lemann, Richard T. Hanson, Pedro Landreaux, Marie Louise Landreaux, Charles Getzinger, Berthelemy Beaubay, Mrs. Geo. Josiah Lord, and the Citizens' Bank of Louisiana, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, by himself and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 4th day of May, in the year of our Lord eighteen hundred and eighty-seven.

Whereas the said above-named principals having heretofore, to wit, on the 4th day of May, 1887, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 5th day of April, 1887, by the circuit court of the United States for the fifth circuit, holding sessions in and for the dis-
451 trict of Louisiana, in the suit of William Cressey *v.* The Consolidated Association of the Planters of Louisiana, No. 10432 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden principals shall prosecute their said appeal to effect and shall answer all damages and costs if they shall fail to make good

their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

STATE OF LOUISIANA, [L. S.]
By M. J. CUNNINGHAM,
Attorney General.
WILLIAM CRESSEY, [L. S.]
By JOSEPH P. HORNOR, *Att'y.*
FRANCIS B. LEE. [L. S.]

Signed, sealed, and delivered in the presence of—
—— ——.

Bond accepted.

ROUSE & GRANT,
Of Counsel.

Approved:
DON A. PARDEE, *Judge.*

452 *Agreement as to Transcript. Filed July* 18, 1887.

WM. CRESSEY
vs.
CONSOLIDATED ASSOCIATION PLANTERS OF LOUISIANA. } No. 10432.

It is agreed that the transcript of appeal in this case shall consist of the following papers:

The original bill and exhibits thereto annexed.
" amended bill and exhibits annexed.
Petition *pro inter esse suo* State of Louisiana and documents annexed.
Answer of the directors.
Demurrer of appellees.
Decree overruling demurrers of the several appellees.
Plea of Levi J. Harris, which plea was adopted by the appellees herein.
Decree overruling plea of L. J. Harris.
Answer of the appellees and the exhibits annexed to their answers.
Replication to the answers of the appellees.
Admissions upon the hearing.
453 The statutes of the State of Louisiana relating to the Consolidated Association Planters of Louisiana.
Extracts from the journal of the house of representatives and senate of the State of Louisiana for the year 1847, offered in evidence by both parties.
Decree.
Motion, order, and bond for appeal.

And it is agreed that any party hereto may take up to the Supreme Court of the United States any other part of the record he

may choose and make it a part of the record at the expense of the appellant.

New Orleans, July 1, 1887.

(Signed) JOSEPH P. HORNOR,
For Complainant, Appellant.

(Signed) ROUSE & GRANT,
For Appellees.

(Signed) M. J. CUNNINGHAM,
Attorney General,
Per JAMES C. MOISE,
Of Counsel.

454 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 453 pages, including pages No-. 222*a* to 222*f*, inclusive, and 210*a*, contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of William Cressey *vs.* Consolidated Association of the Planters of Louisiana *et als.*, No. 10432 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 28 day of September, A. D. 1887.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 28 day of September, A. D. 1887.

EDWARD C. BILLINGS, *Judge.*

455 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Louisiana.

The President of the United States to Hermann Meyer, Bernard Lemann, Meyer Lemann, Richard T. Hanson, Pedro Landreaux, Marie Louise Landreaux, Charles Getzinger, Barthelemy Beaubay, Mrs. George Josiah Lord, and The Citizen's Bank of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Wash-

ington on the second Monday of October next, pursuant to a motion and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein William Cressey, complainant, and The State of Louisiana, intervening for her interests, are appellants and you, Herman Meyer, Bernard Lemann, Meyer Lemann, Richard T. Hanson, Pedro Landreaux, Marie Louise Landreaux, Charles Getzinger, Barthelemy Beaubay, Mrs. George Josiah Lord, and The Citizens' Bank of Louisiana, are defendants and appellees, and you are to show cause, if any there be, why the judgment rendered against the said appellants, as in said motion and order of appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 4th day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

456 [Endorsed:] United States circuit court. No. 10432. William Cressey *et al.*, appellants, *vs.* Herman Meyer *et al.*, appellees. Citation. Marshal's return. Service accepted May 4, '87. Rouse & Grant, of counsel for said def'ts. Filed 4 May, 1887. E. R. Hunt, clerk.

Endorsed on cover: E. Louisiana C. C. U. S. No. 1112. William Cressey and The State of Louisiana, appellants, *vs.* Hermann Meyer, Bernard Lemann, Meyer Lemann, Richard T. Hanson, Pedro Landreaux, Marie Louise Landreaux, Charles Getzinger, Barthelemy Beaubay, Mrs. George Josiah Lord, and The Citizens' Bank of Louisiana. Filed October 5, 1887.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 145.

WILLIAM CRESSEY AND THE STATE OF LOUISIANA, APPELLANTS,

versus

HERMANN MEYER AND OTHERS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR APPELLANTS.

WALTER H. ROGERS,
Attorney-General.
GEORGE A. KING,
CHARLES W. HORNOR,
of Counsel for the State of Louisiana.
JOSEPH P. HORNOR,
GUY M. HORNOR,
of Counsel for Complainant.

NEW ORLEANS, 6 December, 1890.

A. W. Hyatt, Printer and Stationer, 73 Camp street, N. O.—54,003.

Supreme Court of the United States.

OCTOBER TERM, 1890.

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BRIEF FOR APPELLANTS.

HISTORY OF THE CASE.

The proceedings here were begun by a bill in equity filed by Wm. Cressey *December 12th, 1883* (Rec p. 1 et seq.), and an amended bill filed by leave of Court *January 29th, 1884.* – Rec. p. 19 *et seq.*

February 7th, 1884, the State of Louisiana intervened *pro interesse suo.*—Rec. p. 45 *et seq.*

Both the bill and the amended bill were brought

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HISTORY OF THE CASE.

The proceedings here were begun by a bill in equity filed by Wm. Cressey *December 12th, 1883* (Rec p. 1 et seq.), and an amended bill filed by leave of Court *January 29th, 1884.*—Rec. p. 19 *et seq.*

February 7th, 1884, the State of Louisiana intervened *pro interesse suo.*—Rec. p. 45 *et seq.*

Both the bill and the amended bill were brought

on behalf of William Cressey and all other holders of (State) bonds similar to those held by him (Rec. p. 1) and on behalf of "your orator and the other creditors of the Consolidated Association of the Planters of Louisiana." Rec. p. 41. These were the parties complainants in the case. They were joined subsequently by the State of Louisiana, praying for substantially the relief asked for in the original and supplemental bill.

The defendants were: *First*, the Consolidated Association of the Planters of Louisiana, represented by Robert W. Adams, John Calhoun, and three others, constituting the Board of Managers of said Consolidated Association, last elected, appointed in office. *Second*, All the stockholders of the said Consolidated Association, being citizens of Louisiana.

The defendants first named, to-wit: R. W. Adams, John Calhoun and three others, managers, as aforesaid, filed their answer March 3d, 1884, Rec. p. 48. The others demurred, Rec. pp. 53 to 55. These demurrers were all overruled, April 29th, 1885, Rec. p. 56 at top. One of the shareholders filed a plea, November 3d, 1884, but it was overruled April 29th, 1885, Rec. pp. 56 to 60. Then follow the defendants' various answers from page 60 to 122, and completed by the complainants' replication on the latter page.

January 29th, 1887, the hearing was had on the above pleadings, evidence and joinder in issue as to *ten* of the original defendants, Rec. p. 123; was continued

on the 31st, and on February 1st, 1887, after hearing evidence and argument of counsel the case as to them was duly submitted to the Court, Rec. p. 193.

April 5th, 1887, decree was rendered *dismissing complainants'* bill as to the *said particular ten* of the defendants, but bill retained as against the *other* defendants *for further hearing*, Rec. p. 224, and the complainants have appealed. *See same page of Record.*

II.

The first property-bank chartered by the State of Louisiana in A. D. 1827–8 (Acts of March 16, 1827, and February 19, 1828; see Record, pp. 124 to 135, inclusive; otherwise more accurately defined as No. 66 of 1827 and No. 19 of 1828), was called the *Consolidated Association of the Planters of Louisiana.* The capital was $3,000,000.00, divided into six thousand shares of $500.00 each. This capital was not required to be raised by the shareholders, and no provision was made in the charter for any calls upon them; but each shareholder was required to give a mortgage in favor of the Association on lands and slaves equal in amount to the number of shares taken and subscribed for by him, in consideration of which a credit was opened in the books of the Association equal to $250.00 per share by way of loan, and represented by his note, payable with interest in such annual instalments, in fourteenths, as would extinguish the entire principal and interest before the expiration of the charter, secured by the original stock-mortgage.

It was further provided in No. 19 of 1828, section 7 (Record, p. 134) that the State shall be and is hereby acknowledged to be a stockholder to the amount of $1,000,000 *as a bonus* on condition that the State have a continual credit of $250,000 during the charter, paying interest thereon without defalcation; and the State (on final liquidation) being paid the dividends arising from the said $1,000,000 of stock in the same proportions and at the same time that dividends accruing to the other shareholders are to be paid.

Assuming the bonds of the State as worth par, the association realized the whole amount of their face value, say $2,500,000, of which the stockholders had at once to their credit individually $250 per share as a loan, or one-half of the entire capital of the bank—$1,500,000. Balance remaining of $1,000,000 became at once the *sole, active and working funds* of the banking association. The manifest intention of the two statutes was, *first*, to confer on the body politic the usual powers and franchises of a private corporation; and *second*, the power "to discount upon banking "principles on such credit and security as they may "think advisable, provided it does not exceed in value "*the double of their capital.*"—Rec. p. 126, section 7, and p. 134, section 7.

Thus each shareholder received a credit in cash of $250 on the books of the bank contemporaneously with his subscription for every share. He became indebted for $500 on his eventual liability as share-

holder and to the bank for what he might borrow on the credit extended to him by the Statute-charter. To secure the former he gave a mortgage on his plantation and slaves; this mortgage also secured the bank's loan; but both obligations were entirely separate and distinct things, although embraced in one authentic act to the bank. See Rec. p. 194, Document X, Hypothecation of Allain to the Association in French, translation on p. 199.

The bonds of the shareholders and *all* the hypothecary obligations of whatever nature in favor of the association served as a special guaranty for principal and interest of the bonds given by the State and were to be deposited in the offices of said institution for safe keeping. The State bonds issued as aforesaid amounting to $2,500,000 as above were made payable one-third on each June 30, 1833, June 30, 1838, and June 30, 1843.

The bonds first falling due were all paid and extinguished, but on the balance of two-thirds, the State authorized an extension not longer than to June, 1843, and the charter of the association was still further extended to June 30, 1848, and two years thereafter allowed for liquidation.—*Rec. p. 136.*

All these original bonds were returned to the State, and other bonds, in conformity to Act March 15, 1835, were delivered by the State to the holders of said original bonds, in exchange for said original bonds and in renewal thereof.—*Rec. p. 138.*

The legislation of the State as to this Planters' Consolidated Association is thus brought down to the Act of February 25, 1842, when took place the failure of all the State banks under a pecuniary crisis of unexampled severity, bringing about not the *destruction* of the charter of the Consolidated Association, but a series of laws having more or less for object its *liquidation*. And this status of the corporation still continues; a banking corporation still holding in its name first-class mortgage securities in the cities and parishes of Louisiana amply sufficient, if realized, to pay all its debts and relieve the State from all the obligations incurred in its behalf.

III.

The Consolidated Association suspended specie payments, and became insolvent, practically, along with all the other banks of the State without exception, before *February 25, 1842*, on which day the Legislature of Louisiana revived all their charters by Act No. 25 of 1842, *on pp. 139 to 149 of the Record*. In this revival, the Consolidated Association was necessarily and specially included.

March 7, 1842; this Act was amended, Rec. pp. 150-155.

March 11, 1842; a special Act was passed. The Louisiana Code of 1824 contained Art. 3333, copied, *ver. et lit.*, from the Napoleon Code, Art. 2154. "The "registry preserves the evidence of mortgages and priv-"ileges during ten years, reckoning from the day of their

" date; their effect ceases, even against the contracting " parties, if the inscription has not been renewed be- " fore the expiration of this time in the manner in " which they were first made."

The Louisiana Legislature now so amended this article "that the rule requiring the re-inscription of " mortgages at the expiration of ten years from date of " their registry shall not apply to the mortgages which " have been or may be given by the stockholders of " the various property banks of this State." Rec. p. 155.

This article is now 3369 of the Louisiana Code of 1870, and its last clause reads: " *The re-inscription of* " *mortgages is also dispensed with in certain cases provided* " *for by special laws.*"

The so-called "Property Banks" of Louisiana were but four in number, viz:

1. *The Consolidated Association of Planters of Louisiana*, the very *institutiou now under* discussion, chartered 1827-8, as set forth herein on Record, page 124.

2. *The Union Bank of Louisiana*, chartered April 2, 1832, Stats. p. 42, with a capital of seven millions in State bonds, eight millions to be subscribed by the shareholders to secure the seven millions in bonds. This bank was very successful, and paid very nearly thirty-five dollars per share of $100 each to stockholders on a final liquidation.

3. *The Citizens' Bank of Louisiana*, chartered April 1, 1833, Stats. p. 171. Struggling bravely against un-

paralleled difficulties since the war, it still keeps up its reputation as a sound, financial institution.

4. *The Improvement and Banking Company*, chartered 1834, p. 44, and 1836, p. 47. It long since disappeared.

The distinctive character of these property banks required special legislative provisions for their liquidation; hence the various Acts No. 98 of 1842, March 14 (Rec. pp. 155-163); No. 92 of 1843, April 5 (Rec. pp. 163-166), and No. 96 of 1843 (Rec. p. 167). Then came No. 58 of 1845, March 10 (Rec. p. 168), relating especially to the Citizens' Bank of Louisiana and Consolidated Association of the Planters of Louisiana. Then No. 100 of 1847, April 6 (Rec. p. 169); No. 216 of 1847, May 4 (Rec. p. 171); No. 59 of 1848, December 20 (Rec. p. 172); No. 113 of 1853, April 11 (Rec. p. 173); No. 193 of 1855, March 15 (Rec. p. 174), and No. 38 of 1866, February 26 (Rec. p. 174), all providing for the liquidation (the last mentioned Act "for the final liquidation") of the Consolidated Association of the Planters of Louisiana.

Under this immense mass of legislation, the final liquidation of this Banking institution lasted from March 7th, 1842, down to Act No. 20 of 1878, March 30th (Rec. p. 175 to 179). This Act shows that the Circuit Court of the United States for the Eastern District of Louisiana had obtained plenary Federal jurisdiction over the affairs of the Consolidated Association of the Planters of Louisiana, with full, complete and

actual possession of all its assets, holding them for the benefit of all concerned individually, whether citizens of the United States or of the State of Louisiana, or of both, or for the benefit of Louisiana in her Statal capacity, or of all natural or juridical persons, native or alien, no matter of what citizenship. And this Act, whilst admitting the entire legitimacy of the proceedings of the Federal Circuit Court in assuming jurisdiction and obtaining possession of the assets, but averring that the orders by which this possession of the assets and affairs of the said Corporation is held, are "to the prejudice " of the legal rights of the State," the Legislature and Executive of Louisiana, by this act ("hereby") * * * * * * "respectfully requested (it) to cancel and " rescind the orders appointing *receivers* for this cor- " poration and to restore its assets and affairs to the " control of the president and directory, as at present " organized under the Act No. 113 of 1853."—Rec. p. 176, sec. 1.

This the Federal Circuit Court declined to listen to, *in this way*, and seems finally to have yielded to the pressure brought upon the complainant, one Grebner, who by consent of court and at last of all named parties, discontinued his suit. It had been begun September 7th, 1876, and was finally disposed of June 5th, 1880, Rec. p. 35-37. Then a final attempt at legislation resulted in the Act of 1882 (Rec. 179-182), but this proving in every way abortive, the creditors again apply to the Federal Circuit Court

for relief in the case at bar. Since then this Court has regained and still holds undisputed control. In this, the State of Louisiana very properly and wisely acquiesced. No amendment has as yet been made repealing the application of Federal judicial power to suits when aliens are plaintiffs, and citizens of a State defendants; and *a fortiori*, when all States both foreign and federal may apply to the federal courts for relief, as plaintiffs, if they need it or want it.

The Judiciary Department of the State of Louisiana was not idle while its Legislative Department was striving "to right wrong" in so unsuccessful a way. Oscar J. Forstall, owner of certain State Bonds and equivalents, theretofore due and guaranteed by the "Consolidated Association," sued to fix a liability upon it with privilege on certain assets, secured by a pledge of stock mortgages, held by the Association in trust. He alleged that Act No. 20 of 1878, March 30th (Rec. p. 175), was *void for unconstitutionality, Statal and Federal.* He prayed for judgments for the amounts claimed by him with interest on bonds and coupons; that Act No. 20 of 1878 be declared void; that the liquidation of the *Concern* be speedily proceeded with; that receivers be appointed, and eventually that the Directors of the Association proceed to the seizure and sale of all the property mortgaged by the stockholders and to render accounts of their administration; finally, that an injunction issue to prevent the investment of the assets of the Association in Consolidated State

Bonds. The defendant pleaded the general issue and prescription..... *The State intervened, joining in the defense*..... From a judgment in favor of plaintiff, ...Monroe J..... except as to the interest claimed on the dividend coupons and the entire annulment of the Act of 1878, the defendant and the State appealed. The plaintiff and appellee then prayed for an amendment of the judgment, by the allowance of the interest claimed on the coupons, and the appointment of one or more receivers, as asked in the original petition.—See Forstall vs. The Consolidated Association, 34 La. Ann., page 771, in May, 1882. The judgment below was reversed on the trifling matter of an over claim for interest on the coupons, and thus amended it was affirmed with costs.—Ibid, page 777.

The Court then consisted of five judges, three of whom rendered the judgment of affirmance. Fenner, J., recused himself; Levy, J., absent and probably sick, for he died not long after.—See "In Memoriam," November 6th, 1882, p. x, in 34 La. Ann.

The Opinion (by Bermudez, C. J.), in view of the opinion of Monroe, J., in the court of original jurisdiction, may well be given here in full:

First. " By its charter (No. 96 of 1827), the corporation was authorized to borrow $2,000,000 on its bonds, payment of which was to be guaranteed by the mortgage obligations furnished by each stockholder in order to secure the payment of his subscription.

" In general, money corporations derive the capital

with which they transact business from the subscriptions of stockholders, paid either entirely in cash or partly in cash, and partly by notes. In this instance, there was no cash payment at all. Each stockholder subscribed for a number of shares of $500 each, and gave a mortgage to secure the payment of such shares; the obligations thus incurred, with the security thereof, to remain in possession of the corporation's representatives, wherewith to procure money and to operate in banking speculations (operations.) That is the mode usually followed by property banks to raise a capital.

"The scheme authorized by the Act of 1827 proving unsuccessful, the Legislature of 1828 passed an Act (No. 19, p. 130), whereby the sum authorized to be borrowed was raised by half a million, the surplus to be secured likewise by mortgage, as previously required. With a view to facilitate the corporation in its dealings, and in consideration of a *bonus* of $100,000,000 of stock, conceded under certain terms and conditions, the State consented to issue her own bonds, for $2,500,000, to be disposed of by the endorsement of the bank, pledging her faith to the payment thereof, but requiring the bank, upon whom the debt was fastened, to secure the payment thereof by a pledge, not only of all the hypothecary obligations of her stockholders, but also of those of other "individuals" dealing with her, the same to remain in the officers of the bank, to guarantee such payment.

"There can be no question that, by the legislation

of that year and the following years, the debt evidenced by those bonds and by the annexes issued subsequently to cantle (cut into pieces, Webster), the principal obligation into installments, and make them payable at stated periods, ... the debt was not only the debt of the State, but likewise that of the corporation, both the State and the corporation having received a consideration for the issuance of those evidences of indebtedness and unconditional obligations to pay money.

"An attentive examination of the other Acts of 1835, p. 123, secs. 5 and 6; of 1842, No. 98; of 1843, No. 92; of 1847, No. 100; of 1853, No. 113; of 1866, No. 38, and even the Act of 1878, No. 20, whatever that last Act be, coupled with the glaring fact that from first to last payment was effected on the debt by the bank, proves beyond the possibility of a doubt that both the State and the bank considered that the debt was their own, one for which they were both bound primarily as principals, and, strange to note, almost a paradox, also as sureties; the one for the other, the one pledging negotiable securities, the other its faith as a sovereign, both in *favor of* bondholders.

"The validity and effect of this contract, which is a triangular, or tripartite, contract, cannot be tested or regulated by the general law in all respects.

"This is not the case of a contract covered by a law, or of a law covering a contract; it is the case of a law which is a contract, and a contract which is a law, presenting a physiognomy entirely *sui generis.*

"There can be no earthly doubt that the security, or guaranty, given by section 6 of the Act of 1828, for the "*reimbursement*" of the borrowed capital, was given primarily in favor of the bondholders, and secondarily in favor of the State. That section provides that the mortgage obligations subscribed by the stockholders and all other mortgage obligations subscribed by "*individuals*" in favor of the Association shall be deposited in the *offices* of the institution for safe keeping, as a special guarantee and security for the "reimbursement" of the capital of $2,500,000 and the interest thereof, inasmuch as the said Consolidated Association is bound for the reimbursement of said bonds, subscribed by the State, at their respective installments (maturities), and to pay the semi-annual interest until the whole amount of the principal is reimbursed.—7 La. Ann. 319; 2 La. Ann. 416, 776, 835.

"The significant word "reimbursement," wisely used more than once, suggests that of a return of money, of the putting back of money in the purse of one who had taken it out of it; in otherwise, disbursed it. No reimbursement can take place when there has been no disbursement. Who was it that made the disbursement? Evidently not the State, who had lent, not money, but only *her credit*, but those who took their money from their purses and invested it in the purchase of the bonds on the faith of the State and of the securities of the bank legally pledged. It is to those bondholders first, that a "reimbursement," or

payment, was contemplated. Now, it might have well happened that the State might have honored her obligations at maturity in case of a failure by the Bank to have done so. Then the State would have paid her bonds, and in the absence of a stipulation in her favor she would, by such payment, have been legally subrogated to the rights of the bondholders, without a right of competition, however, with other bondholders, if any.—R. C. C. 2162; C. N. 1252; 4 Marcadé, p. 547; 12 Duranton, p. 289; 2 Rob. 244; 20 La. Ann. 359; 30 La. Ann. 618; 31 La. Ann. 859; 33 La. Ann. 591.

"The dominant idea was that the Bank was liable and should pay, and should provide for payment by a security, and that the State would be also primarily bound.

"In such a case of payment by the State, the guaranty furnished to secure satisfaction of the obligation, by reimbursement, would have enured in her favor, not only in her right as subrogated *sub modo*, but also because of a like stipulation in her favor.

"We do not attach any importance either way to the *dictum* in 30 Ann. 1151, apparently questioning the liability of the Bank for the bonds, by reason merely of the endorsement. No question at issue justified it. A reference to the authorities cited does not show it to be founded.

"The case in 15 Howard, 317 (Curran vs. Arkansas), is rather indicative of a liability by endorsement, where a liability for the debt, evidenced by the instru-

ment, was imposed by the charter, in case of negotiation. In his able opinion, the District Judge has well analyzed and criticized the second case, and shown the existing disparity, its consequent inapplicability, for a similar reason to that now before this Court.

"It is patent that the obligations were issued by the State *for the use of the* Bank; that, under contract and for consideration received, both are liable. The liability of the State was judicially recognized.—30 La. Ann. 617, 1153.

"She was compelled to fund the same. It is clear that the debt was a debt contracted for and by, at the same time, the corporation, and that the payment of it was secured by her, as already stated, and that it has several times obtained respites and indulgences, and has, by the course pursued in the transaction of her business, particularly in relation to those bonds, and annexes, recognized and acknowledged her responsibility therefor.

"It is more than manifest that the obligations sued on were honored, neither by the Association nor by the Bank (State), and therefore, that the bondholders are creditors of both, with a right to hold them, under the contract, liable solidarily.

"It is undeniable that if the State had paid the bonds and annexes, in keeping with the pledged faith, she could have brought an action against the defendant and revendicated the privilege and security to which the plaintiff says that he is entitled, and which

the defendant has judicially admitted, in these proceedings, having given *to the State.*

"What rights the State, in that hypothesis, could have asserted aud vindicated, and cannot assert and vindicate, owing to non-payment, the bondholders are entitled, under the law, to allege and enforce.

"It is elementary that a creditor has the right to aver and cause to be satisfied, all the rights which his debtor could, if acting, propound and have recognized and executed.

"Otherwise, the creditor would be at the mercy of a defaulting and obstinate debtor, who might, by a refusal to join, or a neglect to assert rights involving his ownership and title to property and its possession, prevent the enforcement of just claims.—Code, lib. 4, tit. 15, *arg. ex leg.* 66; R. C. C. 1990, *et seq.*; C. N. 1166; 2 La. Ann. 782, 843; 30 La. Ann. 727; 33 La. Ann. 898, 906; 4 Marcadé, 433; 6 Toullier, n. 370, *et seq.*; 7 Ibid., n. 560, *et seq.*; 10 Duranton, 552; Grenier, Hyp., t. 1. pp. 80, 84, 517, 554; Mourlon, vol. 2, p. 614, *et seq.*; J. P. 1853, vol. 2, p. 294.

"It is clear, however, in this case, that the clause of "reimbursement" was primarily stipulated in favor of the bondholders, and that liability of the bank derives not only from the endorsement, but also from the charter and from statutes subsequently passed, proclaiming her responsibility.

"In 30 Ann. 616, the Court declared that her liability had been added to that of the State.

"The declaration in the endorsement was a superfluity for the incurring of the obligation which already existed and was not thereby absolutely created. The endorsement was, however, a legal formality required for the negotiability of the obligations or bonds.

"Second. It is clear that as the payment or reimbursement of those bonds and annexes was *ab initio*, and has uninterruptedly continued to be secured by the pledge of hypothecary obligations of the stockholders and of other "individuals," subscribed in favor of the Bank, the subsistence of the pledge is a constant recognition of the debt, which, it is not claimed, has been extinguished otherwise than by prescription.

" It is no objection that the object or thing pledged was not delivered to the creditor. Even in the absence of a *law contract* it is lawful to stipulate that the pledge may remain in trust, in the hands of a third person, even in those of a debtor, provided it be held precariously. But this objection is untenable in a case like the present one, in which the State, the lawmaking power, who has the right to derogate from its ordinary legislation, has provided expressly and unequivocally that it should be done.

"As long as the debt thus secured, remains, unpaid and the pledge continues in existence, whatever be the time elapsed since maturity, the defense of prescription cannot be raised.—32 La. Ann. 1250; 33 La. Ann. 1444, and authorities cited in each case; 96 U. S. R.

476; Casey vs. Cavaroc; Dig. L. 13 ; T. 7, Secs. 1, 35, 37; DePignerititi, ad "actione et contra," C. N. 2076.

" Third. The complaint of the plaintiff against the Act of 1878 is well founded, as far as that act assumes to postpone the payment of the oustanding bonds, without the consent of the holders thereof.

" The plaintiff distinctly declares that he has not acquiesced in, and protests against such extension. His declaration is not disproved. The respite sought to be granted by the act impairs the obligation of the contract, evidenced by the legislation which the plaintiff invokes, and upon which he plants himself. Anterior indulgences were properly procured with the formal assent of the creditors. But the plaintiff has no right to complain of the tedious mode of liquidation provided by the legislature, in the absence of any other mode previously stipulated, and which could have been invoked as an integral part of the contract.—7 La. Ann. 319, Consolidated Association vs. Claiborne.

"The remedy prescribed for the evil appears to be adequate, and not to be injurious. It is such that the plaintiff and all others similarly situated must endure, even if obnoxious or unsatisfactory.

" There can be no doubt that the Act of 1878, in so far as it directs the investment of the funds of the Association in the consolidated bonds of the State, is an unauthorized diversion of the assets of an insolvent concern, in liquidation, for the acquisition of property for speculative purposes, when the same should pri-

marily be applied to the extinction of its ancient, legitimate, legal outstanding indebtedness, and that such diversion impairs the obligation of the contract of the plaintiff and all other creditors in whose favor the property of the Association must stand and be dealt with as a common pledge ; which it is unquestionably. —R. C. C. 1968, 3183 ; 12 Cal. 300 ; 7 Cal. 579 ; 31 Penn. 175, 185 ; 10 Cal. 563, 584 ; 19 Cal. 11 ; 10 Fla. 112 ; 2 Woods, 48, 108, 128 ; 2 Black, 448, Trustees Canal Co. vs. Beers (Miller, J.'s first opinion), 6 How. 301, Planters Bank vs. Sharp ; 4 Litt. 47 ; 2 How. 608, McCracken vs. Hayward ; 3 Wash. 313 ; 11 Mo. 744 ; 1 Mo. 164 ; 6 Otto, 448, Murray vs. Charleston; 6 Otto, 598, Edwards vs. Kearzey; 105 U. S. 278, Louisiana vs. Pillsbury.

"Fourth.

"The plaintiff is clearly entitled to the interest claimed on the overdue coupons, and it should have been allowed him.—98 U. S. 473 ; 103 U. S. 683 ; 28 Ann, 560 ; 33 Ann. 391, 668, 672."

The judgment has been already stated, ante p. 11.

On this decision of the case in favor of a *resident citizen* of Louisiana, we rely for success in favor of an *alien*. As the State of Louisiana was a party to the case, it might be properly urged that the peremptory exception founded on law, *res judicata pro veritate accipitur*—the law accepts the thing adjudged as a truth—that the decision just given in full was decisive of the present case ; but this is not insisted on. If the law

of the case has not been properly and conclusively reasoned out by the Chief Justice of Louisiana, we admit that the decree must be affirmed and the bill dismissed. We quote it as an argument in favor of the complainant and intervenor here, in precisely the same way as the defendants quote and rely on the case of Consolidated Association vs. Lord, of which we furnish the opinion of the Chief Justice, in confirmation of the opinion delivered by him in the Forstall case. This opinion has been overruled and set aside, however, upon a rehearing, the learned Chief Justice still "*adhering*" to his opinion.—See 35 La. Ann. 438.

About a year afterwards the Supreme Court of Louisiana tried the case just alluded to of the Consolidated Association vs. George J. Lord, reported in 35 La. Ann. Rep. 425. It was brought to recover from defendant contributions assessed against him as stockholder of the Consolidated Association, alleged to be secured by special mortgage on certain urban real estate.

The contributions first claimed are (6) six dollars on each of his 22 shares of $500.00 each, for five years, including 1865, with interest at 8 per cent. They were levied under he provisions of Sec. 6 of Act 100 of 1847, extending the liquidation of the Association.—Rec., p. 169.

The contributions secondly claimed are of forty dollars on each of the same shares, with like interest. They were imposed under the terms of Act 20 of 1878,

providing for a final liquidation of the concern. And both contributions are claimed to satisfy an indebtedness to the State and a liability incurred by her for the Association.—Rec., p. 175.

The State intervened, *now joining and assisting the plaintiff.* The defences were:

a. That the petitioners have no standing in court.

b. That their right of action is barred by prescription.

c. That the State is no creditor of the concern and has no interest in the litigation, and that, lacking a foundation, the claim must fail.

From a judgment overruling the exception to plaintiff's capacity to sue, and referring other defences set up *in limine* to the merits, and from another judgment entitling the petitioners to recover, the defendants appealed.

(This case will be discussed in the argument.)

The opinion then begins:

"*On Exceptions.* The plaintiffs were appointed under authority of Acts Nos. 113 of 1853 and 40 of 1878, for the purpose of bringing the liquidation of the affairs of the concern to a final close. To that end they brought the present suit. The complaint is that they did not set forth their names, but merely stated their official capacities.

"It was not requisite that they should have given their names. As corporate bodies and chartered institutions can, during their existence act judicially under

the name or title given them in the act of incorporation, without mentioning the names of the officers representing them, so, when those organizations have ceased to operate and are in liquidation, the parties entrusted with the winding up of their business can sue in their official capacities without stating their individual names. C. P. 112; 6 A. 542. The plaintiffs have made themselves sufficiently known to the defendants by designating their titles.

"Suit s brought by persons as agents, or for the use of others, have often been decided to have been properly instituted, and defendants have been held to answer the demand. H. D. 1124. Had the defendant seasonably denied the existence of any person entitled to the capacity alleged, the plaintiffs could have been held before issue joined to identify themselves with the trust, but that denial was never entered.

"The corporation was created in 1827. Its charter was modified in the year following. Its existence was to terminate in 1843, but in 1842 its charter was judicially declared forfeited.

"In 1847, with the consent of the stockholders, an assessment was levied and the period of liquidation was extended to 1865. In the year following the legislature authorized a continuation of the liquidation until the maturity of the bonds which the State had issued in aid of the institution.

" In 1878 an act was passed directing a process of liquidation and providing for the continuation of pre-

vious officials, and for the appointment of additional ones. This suit was brought by such officials.

" In the exercise of powers inherent to all well regulated governments over insolvent estates, the legislature was authorized to adopt the acts which it passed for the liquidation of the business of the Association. Those powers have constantly been exercised in Europe, in our sister States and in our own, in some form or other. 12 Ann. 288; 10 R. 460; 7 Ann. 319; 5 Ann. 470; 7 Ann. 286; 6 Ann. 457; 5 Ann. 740.

" The plaintiffs are rightfully in court and can sue, as they have done. A payment made to them in their official capacity of any sum due to the concern, would exonerate the debtor and conclude the organization and all interested therein. 9 Ann. 265; 7 Ann. 114; 8 Ann. 132; 9 Ann. 341.

" The exception to the right of the plaintiff to represent the concern in this suit and to the mode in which they have appeared in court to represent it was not well taken and was properly overruled. The other defences advanced *in limine* could not be dealt with as exceptions, and were properly referred to the merits, to which they really belong. The reference could occasion the defendant no injury.

"ON THE MERITS."

"We think proper to premise that although it is admitted that the State has filed an intervention, we have failed to discover it in the transcript. It was

agreed, however, that the defences raised against the plaintiffs would be deemed as urged against the State.

"From the lengthy and elaborate answer of the defendant and the oral and printed arguments, all of which strenously deny any liability, either to the concern or to the State, the main defences may be considered as being :

"That the claim is prescribed ;

"That the debt was novated and the mortgage extinguished ;

"That by the payment of certain instalments levied under the act of 1847, the stockholders were completely discharged ;

"That each stockholder can be held only for his share of the debts of the association and not for the delinquency of other stockholders or deficiency of the property mortgaged ;

"That this proportion should be computed on the original 6000 shares subscribed ;

"That not more than 5 per cent. can be claimed on arreared contributions ;

"That the stockholders have a right to pay such proportion in any bond issued by the State, under the funding act of 1874 or the Constitution of 1879, that is, $60 for $100; and upon so doing, that they are entitled to a discharge from all indebtedness and to a cancellation of the mortgage originally consented on their property, solely for the eventual payment of the shares sub-

scribed for and in no way for that of the bonds issued by the State.

"The demand and the defences being stated, the merits must now be inquired into.

"The corporation having failed to raise the capital necessary for its banking operations by the negotiation of its bonds, which were authorized to be issued by the act of incorporation of 1827, the State became a stockbolder, and under the act of 1828 uttered her own bonds, acknowledging therein an indebtedness to the corporation, by whose endorsements they were to be transferable. The officers of the corporation endorsed the bonds, with a stipulation of its liability therefor, disposed of them, received the proceeds and applied the same to its purposes. The payment or reimbursement of those bonds were secured by a pledge of all the assets of the corporation, including the mortgage consented by the stockholders to make certain the payment of the shares subscribed for by them. The payment of those bonds was from time to time extended. A large number of the same was funded under the funding act of 1874 by the holders, who, upon receiving from the State other bonds of hers in discharge of their claim against her, ceded and transferred unto her all their right, title and interest in and to the same, and to the securities guaranteeing the payment or reimbursement thereof, fully subrogating the State thereto.

"The State then became a creditor of the concern

for the amount of the bonds funded, or, at least, for the amount of the bonds given in place thereof, acquiring, both by conventional and legal subrogation, all the rights which the holders of the funded bonds could have exercised against the Association to coerce payment.

"It is not correct to say that it was essential for the State to have *paid in money* the bondholders, in order to be subrogated by them to their rights. It was optional with them to accept either money or any other valuable consideration for the cession and subrogation. The transfer could have taken place even without any consideration. The cession, transfer and subrogation could have been made as a benevolence, or as a gratuity.

"But it was not necessary that there should have been any conventional subrogation. As the concern was bound for the payment of the bonds *with* the State, or the State was liable *with* it and *for* it, the State had an interest to acquit or discharge the debt, as far as she was concerned, and she could do so on terms acceptable to the holders and most suitable to her interest. She obtained thereby her release from the holders, with a curtailment of 40 per cent. on the dollar. Whether this partial release accrues to the benefit of the State alone, or to that of the concern also, is a question which is not presented in this case, and which does not require a decision presently. It will be time to determine it when the issue will be properly submitted.

"It is for the purpose of meeting the indebtedness in favor of the State, as also of paying what unfunded State bonds may exist, that the contributions, particularly that of $40 per share, have been raised.

"The liability of the Association for the payment of the bonds of the State was constantly acknowledged by it. It was recognized in the Forstall case, lately decided, 34 Ann. p. 770, O. B. 56, fol. 1032. That acknowledgment concludes absolutely both itself and the stockholders. It therefore cannot plead an extinction of it, either by prescription, novation or otherwise. Its liability, therefore, is commensurate with that of the stockholders, which extends rateably to the amount of their subscription for stock, secured by mortgage on the property subjected thereto, or so much of said subscription as may be necessary to satisfy the liability for the bonds.—18 Ann. 310; 24 Ann. 405.

"The right of holders for payment was declared to be imprescriptible, the State not being suable. 30 Ann. 611. The obligation of the Association, whatever it was, to discharge the obligations which the State had incurred for its benefit, was co-extensive with the responsibility of the State. The securities guaranteeing the fulfillment of that obligation have continued unimpaired, unless prescribed, and will remain so until the liabitity secured shall have been satisfied.

"The defence, as against both the plaintiffs and the State, that the latter is no creditor and that no call can be made to pay a debt which has no existence, would

have been formidable, indeed destructive of the action, if founded; but such is not the case,

"It is undeniable, that, in 1850, when he purchased from the Mechanics & Traders' Bank the property on which the mortgage is claimed, the defendant acquired, at the same time, the twenty-two shares which had been previously bought from the Widow Duplessis, an original stockholder, and that he assumed, or took the reversion of the mortgage given by her to secure the payment of that stock, then valued at $500 per share, $11,000 in all. In 1850, the defendant then stood in the same condition as Mrs. Duplessis, vested with the same rights and subjected to the same obligations.

"The history of the Association, the object, tenor and character of its charter, the vicissitudes through which its stockholders, its creditors, the State have passed, the tale of its protracted and onerous liquidation are familiar to the jurisprudence of this State. In some twelve cases has the highest court had occasion to consider the same.—2 Ann. 1012, 776; 3 Ann. 552; 7 Ann. 319; 10 Ann. 591; 24 Ann. 519; 27 Ann. 535; 30 Ann. 611,980, 1151; 34 Ann. 770, O. B. 56, fol. 1032. The legislation concerning it covers no less than sixty-five pages of the statute books.

"It is needless, therefore, to enlarge what has already been said on the subject. It suffices for the purposes of this case, to know that the Association has long since ceased to be a going institution and that the liquidation of its affairs was entered upon. The corpo-

ration ceased business, but never disbanded. It continually remained under the charge and administration of officials, recognized by law.

"In order to accomplish the liquidation it was necessary, on the one hand, to ascertain the debts and liabilities, the assets and resources; and on the other, in the event of deficiency or deficit, or in other words, of inability to pay or insolvency, the right accrued to collect, without obstruction from the stockholders, contributions, wherewith to meet the indebtedness of the concern.—9 Ann. 265, 341.

"It is important to note that the mortgage originally consented was furnished to secure the payment of the value of the stock subscribed for; and also to secure the payment of the bonds to be issued by the concern at five, ten and fifteen years, for the purpose of raising the capital necessary for banking operations. It was on the failure of the institution thus to raise the capital that the State, becoming a stockholder in 1828, issued her bonds, the payment of which, fixed to June, 1843, became secured in the manner indicated by Act No. 19 of that year.

"In 1830 the legislature granted two years after the expiration of the charter in 1843, to close the affairs of the Association. In 1835, the payment of the bonds of the State was postponed to June, 1848. In 1843 the assets of the Association were taken possession of by the State, so to remain under her management until final payment of all the bonds issued by her in its favor. In

1847 the bonds were extended six, nine, twelve, fifteen and eighteen years, and a contribution was authorized to be raised sufficient to meet the obligations of the State, to be divided into installments running from one to seventeen years.

"In 1853, by Act 113, the president and directors, constituted in accordance therewith, became and remained the sole liquidators, representing both the Corporation and the State, and as such, were entitled to the possession and exclusive management of the assets and affairs thereof.

"In 1866 the legislature authorized a further postponement of the payment of the bonds of the State for ten years, and a prolongation of the liquidation of the concern until the maturity of the bonds thus extended.

"A careful and attentive survey of the whole legislation, however obscure, on the subject of this Association, satisfies the mind that the right of action against the stockholders for the payment of their shares in whole or in part, was not an absolute, unconditional one, but an eventual one, not to arise unless in a contingency, a deficiency in the assets, an inability to pay, until a call for that purpose had been actually made. Hence that right accrued only the moment the assessed installments matured, and becoming exigible, were demanded.

"The contribution called for in 1847 was of $6 per share, during seventeen years. The defendant has

paid all, up to 1860, but since has failed to pay any. He pleads prescription in defence.

"The proposition is unwholesome, that prescription does not run on money claims of the description of those sued on against corporations, whether going or not. It is only where the claim has not ripened by the happening of a contingency, in contemplation for its maturity, that prescription does not run.

"The initial point in this case, when prescription began to run, was not precisely the happening of the contingency which justified the call for a contribution, but *was the call itself.*

"The payment of the obligation of the stockholders to the Association was *secured by a mortgage and not by a pledge,* It is the payment or reimbursement of the *bonds of the State* that was *secured by a pledge.* Hence, the stockholders can plead *prescription against the assotion,* while *that defence cannot be set up against a clam of the bondholders. or of the State, although the pledge may in itself be destroyed by prescription.*

"This suit is not by a bondholder, or by the State subrogated, *but by the Association for a partial payment of the shares secured by the mortgage. A pledge keeps the debt alive, a mortgage does not.*

"It does not appear that the stockholders have ever assumed the liabilities of the Association, or have at any time consented that their obligation in its favor and the mortgage guaranteeing it, be pledged to secure it. Whatever the effect of the pledge may be as to the As-

sociation, it cannot prevent the stockholders from pleading prescription against the Association, when it seeks to enforce payment of the obligation pledged as a security for its debt.

" Prescription proves destructive of money claims owned by married women, minors and interdicted persons, the responsibility for permitting their extinguishment resting on the person who could have interrupted and prevented it from accruing, but did not do so. There is no reason why that mode of extinguishing obligations owned by corporations should not also prevail, in the absence of any statute of immunity taking them out of the rule governing such cases.

" The liquidators should have brought suit, on the failure of the defendant to respond, for the recovery of the contributions raised under the Act of 1847; or at least, before prescription could have extinguished the right of action. This suit was instituted in *1881*, far more than ten years after the maturity of the last installment in *1865*. 3 Ann. 181; 9 Ann. 342; 13 Ann. 259. Whether the action was prescribed by *five* years, it is not necessary to decide, as it was surely extinguished by the lapse of *ten* years.

" The suit for the five installments, ending in 1865, must then abate in favor of the defendant.

" It now remains to be determined whether the plaintiffs can recover the contribution of forty dollars per share, assessed under the Act of 1878.

" That contribution is nothing but a part of the

original debt contracted for the purehase of the shares, the payment of which was secured by conventional mortgage. The debt contracted was the value of the shares, which was to be paid at no specified date, but eventually only.

" In Clinton and Port Hudson Railroad Company vs. Eason, 14 Ann. 876, although the plea of prescription was not sustained, the court considering and discussing the very question, and reviewing the previous ruling in 3 Ann. 181, 9 Ann. 342, 7 Ann. 116, 13 Ann. 259, 12 Ann. 528, announced the doctrine that where the liability of a stockholder in an incorporated company, on a mortgage given to secure the subscription to the capital stock depends on a future contingency, prescription does not begin to run unless that contingency has happened, which was to make the payment of the subscription demandable. We concur in that proposition, which we consider well founded in law.

" In the present instance the contribution of forty dollars was *called* under the provisions of the Act of 1878, and five years have not since elapsed.

" We will now proceed to consider summarily the other defences, some of which could be considered as inconsistent and self-destructive.

" That of novation is not sustained by the evidence. The debt of the defendant to the Association is in nature what it was when Mrs. Duplessis incurred it. It has not in the least been since changed or modified. This defence was rather designed to defeat the

indebtedness to the State, but it cannot avail. The giving of new bonds in place of the old ones, although it discharged the liability of the State to the holder, was not destructive of the rights of such holder against the Association, rights which the State acquired, as was already said, both by a conventional and by a legal subrogation.

" The defence, if of any force, that the payment of all the installments under the call made in 1847, operates as a discharge for the surplus of the subscription, cannot avail the defendant, as he has not paid them. That he is relieved by prescription from paying the contributions claimed is not an equivalent for payment. Prescription is not the coin recognized by creditors, for the satisfaction of their claims. It is not *money.*

" The defence touching the quantum of liability, on the assumption that it could relieve the defendant, cannot be inquired into, in the absence of evidence to substantiate it.

" There may have been, and, no doubt, there has been for a series of years, a deplorable mal-administration of the affairs of the concern, but, at this late hour, the tardy complaint of the defendant cannot relieve him. He was not without remedy. He does not appear to have exercised any right or sought any relief. For having slept on his rights, he can blame no one but himself. 6 La. Ann. 457; 7 La. Ann. 114; 9 La. Ann. 341.

"The evidence does not show that the contribution of forty dollars is not what it should have been, or that it is excessive. 25 La. Ann. 136.

"The defence touching the rate of interest is well founded. There is nothing in the record to show that a higher rate than that allowed by law was ever agreed to by the stockholders. The charter, and the acts subsequently passed are absolutely reticent on the subject. To such effect was a previous ruling. 10 La. Ann. 611.

"*The last defence as to the mode in which the obligations of the concern, or of the stockholders to the State, can be satisfied, cannot be passed upon in this case. The State is not asking now payment of the bonds issued by her.*

"The judgment appealed from erroneously allowed the five installments, the last of which matured in 1865, and also an interest higher than five per cent. on the contributions under the Act of 1878.

"It is therefore ordered, adjudged and decreed that the judgment appealed from be reversed, in so far as it allows the five installments aggregating $660 and the interest thereon, and interest higher than 5 per cent. on the contributions under the Act of 1878, of forty dollars per share aggregating $880, that it be amended by striking therefrom said allowances, and that thus amended, it be affirmed, plaintiffs and appellees to pay the costs of appeal."

Fenner, J., recused. Manning, J., takes no part, the case having been argued and submitted before his appointment.

On a rehearing, however, Poché, J. (changing his opinion), as well as Todd, J., and Manning, J., giving the decision, Fenner, J., still recused, Bermudez, C. J., adhering to his original opinon, the judgment of the lower court was reversed, and " that there be now judgment in favor of the defendant and rejecting the demand of the plaintiffs and for costs." The opinion of Justice Manning is at p. 102 of the Record, and that of Justice Poché is annexed to this brief as an appendix, for more ready reference.

As this latter judgment summarily disposed of all the legislation of the State, as well as the prior multitudinous judicial proceedings and decisions of the Supreme Court of Louisiana, this Honorable Court is now called upon to review the entire case *ab initio*. The fundamental distinction between the present litigation and all the past litigation is that the contest is between an alien and a subject of Great Britain and Ireland and all others similarly interested, *aided and assisted by Louisiana* as a State on the one side, and on the other, the many individuals headed by Herman Meyer, who have respectively assumed or incurred the liabilities and obligations of stockholders of the Consolidated Association of the Planters of Louisiana, together with the representatives of this bank, appointed by the governor and elected by its stockholders ; or the present still existing shareholders of the bank *on the defence*, and all the bondholders and the people of the State of Louisiana *on the attack*. Louisiana having *reversed* her position assumed in the Forstall case.

ASSIGNMENT OF ERRORS.

The court below erred in dismissing the bill and the intervention of the State of Louisiana.

Some of the questions involved in the pleadings and evidence, raised by the demurrers, pleas and defences of the defendants, and intended to be discussed, are:

First. Has this Court jurisdiction?

Second. Had the Federal Circuit Court for the Eastern District of Louisiana jurisdiction over the case as presented by the bondholders?

Third. Had the State of Louisiana the right to intervene and be heard?

Fourth. In the progress of the cause, and in its disposal, was there a strictly federal question raised, which would give jurisdiction to this Court *ratione materiae?*

Fifth. Was the action presented in the bill barred by the defendant's pleas of prescription, novation, peremption of mortgages and *res judicata?*

Sixth. Did the payment of installments under Act No. 100 of 1847, by the defendant stockholders of the bank completely discharge them from all liability?

Seventh. Does not the original pledge to the State of all the securities of every kind taken by the bank to secure the payment of the State bonds issued to the bank, exist now in full force and virtue?

ARGUMENT.

The radical question in this controversy between the shareholders of the Consolidated Association and the holders of the State bonds and their trustee, the State of Louisiana, embracing all the citizens of the State who are liable in their statal capacity for the same, is :

Are the shareholders of the bank liable to the State and the bondholders for the amounts still due on their subscribed shares of $500 each and of $250 each on loans made to them thereon, according to the charter ?

To reach a solution of this question is the object of this bill in equity.

I.

Has this Court appellate, and had the Federal Circuit Court original jurisdiction of this controversy ?

As to the *appellate* jurisdiction, the intervention of the State of Louisiana *voluntarily* in the proceedings, both in the United States Circuit Court and here by its attorney-general, removes all difficulty on this score. The argument applies both to *ratione persona* and *ratione materia* jurisdiction. The case is one, by its very nature, of peculiar expediency for the exercise of federal equity jurisdiction, for it involves the various spheres of civil, judicial, public, commercial, industrial, financial and agricultural affairs ; and the various relations of citizens and aliens to the people of the State and of the United States ; a case arising

under the Constitution and laws of the United States and which has reached a temporary quietus in the courts of Louisiana, but which has been now brought in a Federal Court with entire confidence and firm reliance, not only of aliens, but of the people of Louisiana, on the principle "that good men prevail in the end."

No State of the Federal Union can be sued, however, without its consent. This is the universal rule of sovereignty, to which there can be no exception in international law.

Into the Courts of England, e. g., the United States, as a nation, can enter and exercise this right to sue any of her subjects or denizens, who are not ministers or adjuncts of some sovereignty. She has actually done it, and been made fully conversant with the extent, character and limits of this jurisdiction. This nation is a body politic, a great corporation, and as such sovereign claims this right under the universal rule of sovereignty laid down.

But the counterpart of this rule of sovereignty is that, whilst every foreign sovereignty has the right to sue in our courts, he cannot be sued there *without his consent.*" "To deny the privilege of this rule (and its counterpart) to any sovereign would manifest a want of comity and kindly feeling." If this be the reason of the rule, and it applies to foreign states as sovereigns, how much more would the doctrine apply to the domestic States of this Union? To our minds the right

of the State to have recourse to any Federal Circuit Court in the country, in a proper case for equitable relief against her own citizens, or citizens of any other State, exists in full perfection. The argument is just as effective in this case as in Hans, 134 U. S., p. 1: "Although the obligations of a State rest for their performance on its honor and good faith, and cannot be made the subject of judicial cognizance unless the State consents to be sued, or comes itself into court; yet, etc." Well, here she is doing both, "consenting to be sued, and coming herself into court." Louisiana could not be sued against her will in any federal court, but she can, if willing, sue in all or any of them. Her position, then, is identical with that of any foreign sovereignty suing in the English court.

The two rules may be expressed more definitely thus:

Without its consent no State, domestic or foreign, can be sued in any court whatever.

With its consent every State may sue in any court of any country having a general jurisdiction.—(See State of Louisiana in Warmoth's case, 17 Wall. 65.)

In reply to this universal doctrine of international law, it is urged, in the instant case, that, by the Federal Constitution, judicial power extends to "controversies between citizens of different States;" that here the corporation represented by the president and directory, the so-called liquidators, managers, agents, trustees, as well as all the shareholders, are citizens of

Louisiana, and "the State of Louisiana cannot be a citizen of a different State." This is most true. She cannot, by possibility, be a citizen of any State, or in any wise a citizen. The term citizen can, with no more propriety, be predicated of a State than of the nation. Substitute "citizen" for "State" in the eleventh amendment, and you have an unintelligible proposition.

But this is not the clause of the Constitution we rely on. It reads, "controversies between a State or the citizens thereof, and foreign states, citizens or subjects." Here "citizens" cannot be restricted to foreign citizens with any more propriety than "citizens of another state" can exclude "citizens of the same State." The doctrine we contend for is the only reasonable one, and based on the firmest principles of international law.

But the consent must not be hampered with any mental reservation or equivocation whatever. If the State of Louisiana had voluntarily submitted to federal jurisdiction in the Hans case, can there be a well founded doubt that it would have been exercised? If the State of Georgia had consented, as it should have done, to the full and plenary exercise of the jurisdiction of the Federal Circuit Court of Georgia, when June 3d, 1879, it filed its application for a specific order for leave to prove certain facts in a certain suit, amongst others, that the Federal Court was without jurisdiction; "couched in a formal suggestion that it had overstepped the limits of its jurisdiction, accompanied by a re-

quest that it would revise its proceedings,"—it is too clear for argument from the tone, temper and patriotic feelings of the opinion, not only that the State would have been properly welcomed and full justice done to her, but, what it is still more important to insist upon, her State sovereignty would have been recognized to the uttermost limits of the Federal Constitution.

Georgia vs. Jesup, 106 U. S. 458.

The principles underlying this opinion seem particularly applicable to the present case. There the Federal Circuit Judge denied the right of Georgia to intervene by her attorney general, for want of the evidences of what consent ought to be, a free, full perfect declaration of will. Georgia never could become a party, under the pleadings and circumstances, to that suit. Though it was within the judicial discretion of the Federal Circuit Judge to deny first and then dismiss the petition of the State, he decided the case on a correct principle of law, which your Honors affirmed. The consent of the State to sue, which always includes the consent to be sued in the same suit, was a pure simulation, a naked pretence, in law, void and null. *Quod nullum est nullum producit effectus.* "There can be no science as to nonentities."

It is also objected that the attorney general of a State has no right to appear in a Federal Court and make the State either defendant or plaintiff without the State's assent through its legislative department. But this doctrine is supported by neither theory nor prac-

tice. The radical distinction between making laws and administering laws, between *jus dare* and *jus dicere* is too well established to be lightly overthrown.

Another objection to the jurisdiction is that the relief of the complainants is at law. This is one of the *apices juris* of federal jurisprudence. But this whole case is nothing but a suit to foreclose a multitude of mortgages; for a master to state an account; for a receiver to take charge of the property; in brief, to liquidate and settle the affairs of an insolvent bank. A suit at law by each holder of a bond, would have been, it seems to us, somewhat disorderly.

See also Field vs. Mayor, 6 N. Y. 179. The interests involved are various and not a unit, and there are strictly no trustees to the mortgages.—106 U. S. 519; 113 U. S. 302; 120 U. S. 757; 105 U. S. 175.

But still more pertinent to the argument are the two opinions and judgments in Georgia vs. Brailford, 2 Dallas, 402, 415; and see further, 3 Dallas, p. 1, same case.

But it is not understood that all the objections raised by the shareholders are available to them. William Cressey has appealed with the State. Many of the objections interposed as to him would not be applicable in any way to the State. Indeed, we may admit at once the great distinction between the Memphis Water Co., 107 U. S. 210, and the Tennessee Bond Cases, 114 U. S. 663, to consist in this: that Tennessee was no party to either suit.

It is further objected that the jurisdiction is unquestionable when a fund has been raised in a Federal Court and is waiting to be distributed; any party interested, whether sovereign or citizen, King or subject, may intervene and be heard (as in Georgia vs. Jesup); still, although the very object of the suit is to raise the fund, no such right to intervene *pro interesse suo* exists, especially as, in the instant case, the decision may involve a controversy between the intervening sovereign and his own citizens or subjects.

But there is nothing whatever in these objections for many more reasons than those stated in Clark and Rhode Island vs. Bamard et al., assignees in bankruptcy, 108 U. S. 436, appeal from the Federal Circuit Court of Massachusetts. Rhode Island was the only real, actual defendant in the case *ab initio*, through her general treasurer, Clark, who demurred to the bill for defective jurisdiction. This demurrer was overruled, and then the treasurer answered. The case is almost on all fours with the instant one. But from beginning to end, the attorney-general of the State of Rhode Island made no appearance. The treasurer and the State were represented by ordinary lawyers. This fully appears from the report itself. This fact puts to flight the idea of the necessity of a legislative Act to make a State a willing party to a suit in the federal courts, and there was certainly no reason for Rhode Island persisting so obstinately in its demurrer, in view of the ultimate decree in its favor.

The two questions remaining on the demurrer of the defendants herein, first, as to lapse of time, and, second, the Act No. 100 of 1847, are subsequently disposed of herein, on the merits.

The jurisdiction is further assailed by the suggestion that the Supreme Court is the only one that can take cognizance of a case in which a State is a party, it having, by the Constitution in such cases, original jurisdiction. But the language of the Constitution employs these words: "In all cases in which a State shall be a party the Supreme Court shall have jurisdiction." The construction put upon the word "all" has not made the jurisdiction exclusive, for that would have violated the rule of *haeret in cortice*, and the popular employment of the word "all." Omniscience has never yet been attributed to the men who drafted the Constitution. It is also urged you cannot enforce a judgment against the State should you reach one and render it. But this is a matter entirely *in thesi*, and any agitation of the question is quite premature.

In discussing the right of a sovereign to sue and be sued (for the first necessarily includes the last), the question of original, or appellate, jurisdiction is not directly involved. There is nothing inconsistent in a Federal Circuit Court having original and your Honors appellate jurisdiction over the same case. Had Pennsylvania sued the Quicksilver Company in a United States Circuit Court, either of Pennsylvania or of California, or of any other State in the Union, the juris-

diction would have been undoubted. 10 Wall. 553. The sole point was, had the Supreme Court, U. S., *original* jurisdiction? Seeing this court trying a case of "the highest equity" before the Chief Justice and a jury would surprise some lawyers of the present day. Had the United States brought their suit against McRae in the House of Lords, rather than in a Vice-Chancellor's Court, the spectacle would hardly be less surprising. L. R. 4 Eq. 327. The Hans case is based on this undoubted principle. When the intention of a legislator is clear that intention constitutes the law. A thing may be within the letter of a statute and not within its meaning, and it may be within its meaning, though not within the letter.

The State here represents its *people*, struggling against the efforts of a class known as planters, owning plantations and slaves, with those who have incurred or assumed all the obligations of these planters to the State by authentic act, equivalent to solemn judgments by *confession* rendered in competent courts under Louisiana law. The very title of the corporation shows this: "The Consolidated Association of the Planters of Louisiana." The two acts constituting its charter exhibit plainly the mark of class-legistion, which has ever been obnoxious to all lovers of freedom in this country.

The sixth section of Act No. 19 of 1828 (Rec. p. 133), was "the sop to Cerberus" to save the charter of the Association from the condemnation of the judiciary

of Louisiana as far back as January, 1850, more than forty years ago. It was the first case in which this bankrupt property bank strove to rid itself of its obligations to the State and saddle them on its people by suit against the State instituted in virtue of a special act of legislation under date of Dec. 19, 1848. The case was admirably reported, very well argued, and decided without a doubt remaining in the minds of any one of its entire and absolute correctness. Of the Louisiana Supreme Court, under the guidance of Eustis, C. J., Rost, Slidell and King, in those years, the State has been, now is, and ever will be proud, so long as jurisprudence makes any claim to being a science.

At this time (January, 1850) the bank had its full complement of shareholders—8000 shares of $500 each, total.....$4,000,000 00

Calculating, as the bank then did, that

2000 of those shares belonged to the State..... 1,000,000 00

and 6000 belonged to the stockholders 3,000,000 00

and was insolvent at that moment to the extent of..... 500,000 00

"The object of this suit is to recover from the State a present sum of $12,000," (this is exactly $6 a share on the 2000 shares owned by the State, which figures throughout the whole proceeding,) "and to obtain a further decree adjudging the

liability of the State to contribute as a stockholder, at all times when necessary, its proper proportion towards paying the debts of the said bank."—Consolidated Bank vs. State, 5 La. Ann. 44 to 54. This judgment was absolutely in favor of the State. Ibid. p. 61.

The bank was then, and has been ever since, and still is in liquidation. *Then* it only claimed from the State the payment of one-third of its obligations; *now* it claims *the State owes all the obligations of its shareholders!*

The State originally issued its bonds to the bank for $2,500,000. In the process of liquidation the amount of bonds has been reduced to a sum of about $500,000; say, $64,000 outstanding of the original bonds and $420,000 of scaled bonds down to $252,000, say at 60 per cent (Rec. p. 41 and p. 46). On *these*, however, interest has been paid by the State for ten years, amounting to, say, $117,000 and over. On *those*, principal and interest are both due from the bank.

Hence, as to the value of the thing in dispute to confer jurisdiction, there can be no doubt.

II.

The State of Louisiana as an *entire* party (9 Wheat. 906), having been permitted to file its bill *pro interesse suo* and thus made a regular party to this cause, the present decree appealed from is claimed to be final as to the State, and if not reversed, may constitute the thing adjudged, and affirm a certain judgment of the

highest court of Louisiana alleged to be irreconcilable with several other judgments of the same Court, and in addition violative of the obligations of the stockholders and the Bank, in its charter, contrary to both Federal and State Constitutions.

III.

The Court erred in holding that the claims of the plaintiffs were barred by the statute of limitations of the State, i. e., prescribed; and this seems not only to be the main defence relied on by the appellees, but to be sustained by the last decision of the Supreme Court of Louisiana, on the rehearing, in Consolidated Association vs. Lord, 35 La. Ann. 425, the opinion in question being on pp. 434-441, as well as in this record, p. 102, and is very plainly intended for a decision, not only against the Association through its managers, but also against the State itself, on both the ultimate and circumstantial facts, The original opinion of the Court in the case was at last set aside (Ib. on p. 428 of 35 La. Ann.), and demonstrates this. It is given here in full on p. 11, *ante.*

The present defendants herein specially plead the prescription of *thirty years* against "*the State and the persons charged with the said liquidation and the holders of the bonds of the State.*"—Rec. p. 63.

This plea is reiterated on Rec. p. 67, and reads: "the prescription of *ten* and *thirty* years." And on Rec. p. 68, the article of the Louisiana Code under the

title of Prescription, numbered 3540 *five years'* prescribed bills, notes and negotiable paper of the merchant; and 3544, *ten years* prescribes in general all personal actions, are also relied on. It is clear from the XVI paragraph of the answer (p. 71) that no attention to the suspension of prescription in regard to certain "installments of the loan debt" is paid to the fact of the war.—12 U. S. Stats. 765; Bird vs. Bank, 93 U. S. 97. It has long been judicially setted *here*, that the war began April 19, 1861, and ended in Louisiana April 2, 1866. The five years' prescription being entirely inapplicable, only the prescription of ten years remains. But even this cannot be upheld if the call were made in 1865 and suit begun in 1881 without a closer approximation to dates not furnished by this record.

The existence of the war between the States is a very important fact, ever to be kept in mind in the consideration of this case; the *political* facts just as carefully as the *juridical* ones.—See also Scovill vs. Thayer, 105 U. S. 143.

But whether, as a late Circuit Judge quite recently held on a plea of prescription or the statute of limitations, "the greater includes the less," and one plea of the prescription of thirty years includes all of any shorter terms, need hardly be discussed here. The question is a much broader one. We claim that stockholders' bonds, coupons, annexes or any other written obligations of any nature or kind involved in this case are as to the *State of Louisiana* absolutely *imprescripti-*

ble and staleness of claim is just as much out of place to her as it is in all cases, to the United States. *Ubi eadem ratio, ibi eadem lex.*

No statute of limitation, no law of prescription can embrace our nation or our State, without being made expressly applicable to it by the legislator. "No laches can be imputed to the government (of a State) and against it no time runs to bar rights." And the *ratio* for this principle " is to be found in the great public policy of preserving the public rights, revenues and property from injury and loss, by the negligence of public officers."

U. S. vs. Hoar, 2 Mason, 314.

Story, J., adding.

" And though this is sometimes called a prerogative right, it is in fact nothing more than a reservation or exception, *introduced for the public benefit, and equally applicable to all governments,*" and citing, Inhabitants vs. Stoughton, 4 Mass. 528.

Metropolitan Railway Co., vs. District of Columbia, 132 U. S. 1, 11.

This very point was made in this Association vs. Comeau et al., in 3 Ann. 552, Slidell, J. and the court said : " We do not express an opinion on the point " made by the plaintiffs, that the prescription of this " obligation was taken out of the ordinary rule by *the* " *provisions of the charter of the bank*, and more particu- " larly the *sixth section* of the Act of February 19th, "1828." We need only add to what the court says as

to this very sixth section in Association vs. State (5 Ann. 44, 55, Slidell, J.,), to see exactly what the judge and the court meant to be understood. The implication is just as clear as the expression.

So in this Association vs. Mason, 27 Ann. 535, Taliaferro, J., July, 1875 :—" There is then no place for delays, for calls in warranty, nor operation of prescription of its debts (*liberandi causa*) *or* peremption of its mortgages (*acquirenda causa*).

The same court and judge however, distinguish between the sovereign acts of the State of Louisiana and its officer's acts, as payee of a note given for swamp land sold by the State (a commercial instrument) and held the action on such a note was barred in five years. —Graham vs. Tignor, 23 Ann. 570.

The irrelevancy between this last cited case and the instant case is manifest. *Louisiana is here in her sovereign capacity solely.*—See also LeSassier vs. Board Liquidation, 30 Ann. 611.

Further and more definite reasons and authorities that the claims of the State are *imprescriptible* will be found at great length in both the opinions of Chief Justice Bermudez in the Forstall and Lord cases herein set forth in full, particularly on pages 11 and 22 ante. Both opinions are made parts of this brief and argument.

The same assignment of errors embraces the question of the alleged novation of the claim of the State, and the extinguishment of the mortgage given to secure it,

The novation claimed is that the State by its funding act, compromised with her creditors for 60 per cent. of the face of these very bonds issued to the Bank. These shareholders by litigiousness and delays in paying their dues brought about to this extent this repudiating action of the State and overwhelmed it with unmerited opprobrium, under which the State still suffers. In view of what is said in the intervention of its attorney general we need not enlarge on this point. In fact, it appears that the defendants themselves place on it but little reliance. Indeed, they claim the benefit of it, the justice of which the State may fully recognize hereafter.

Not so, however, with the additional peremptory exception or plea in bar of *res adjudicata* set forth with so much apparent confidence in the defendant's answer on Record, p. 64, paragraph II. We have hereinbefore set forth the opinion given originally by Chief Justice Bermudez, ante p. 22, *et seq.* The constituting necessary elements of this *exceptio rei adjudicatæ* are, 1st, the same parties; 2d, the same thing demanded; and 3d, demanded on the same cause of action; La. C. 2286; C. N. 1351. The basis of the whole plea is a good and certain judgment of a character *definitely decisive.* Here such a judgment is entirely lacking. It is set out ante p. 37 in full, and is in reality nothing but a *nonsuit* at the most, and it is exactly what was prayed for (Record, p. 224 at top), a judgment for defendant, rejecting the demand of the plaintiff, and for costs. This is, at best, nothing but a dismissal without prejudice under

Louisiana law. It needed the obligatory word "forever" to make it *definitively decisive.*

See the decree in Smith vs. Atlas Cordage Co.—41 La. Ann., pp. 1, 6.

Besides, the parties are not the same. None of the alien or other bondholders then were, but are now, all of them, parties *through* the State as well as all the shareholders *through* the pleadings. Nor is the same thing, *eadem res*, involved. In Lord's case, the claim was for two distinct and separate contributions for sums of money, for two entirely distinct and separate obligations, both secured by special mortgage set forth fully ante p. 21. The present suit is for *the liquidation of a corporation* and *the foreclosure of mortgages* together with the *enforcement of a right to a pledge.*

The first is a pure personal action; the second a *universitas juris*—a proceeding *quasi in rem*—a well-known class of cases, combined with a right of pledge in the present suit. Besides, then the Association was the plaintiff; it is now a defendant, and the State then was "not asking payment to her of the bonds issued by her," and "the mode in which the obligations of the concern, or of the stockholders to the State could be satisfied," was not properly before the court. Opinion of Chief Justice Bermudez, ante p. 36.

See also the State's intervention and prayer in Lord's case.—Rec. p. 216.

Hence, if a reasonable doubt exist, whether this judgment in favor of Lord be a certain final judgment,

it cannot be the basis of the plea. We submit we have shown sufficient reasons for a sufficient doubt.

Russell vs. Place, 94 U. S. 606, quoting Coke on Estoppel.

Indeed, we do not think that the defendants rely on the judgment in the Lord case, as a *res adjudicata quoad omnes*, or that they affirm it can in any way be made to operate as a decree or judgment in an *in rem* proceeding, of which the whole world has notice. We find nothing in the case that goes to sustain this view of it.

We think, and have endeavored to show, that the judgment in Lord's case was to a certain extent disorderly. It is further proved, by the reasons for judgment therein, which judgment overrules several prior opinions of the Supreme Court of Louisiana upon the liquidation and settlement of this very Association of Planters. If no laches can be legally attributed to the legislative department of the State, and if the plea of prescription cannot be urged against claims of the State against the bank—principles of law and decision entirely beyond contestation—then we contend your Honors must stand to, abide by, and follow the old decisions of the Supreme Court of the State, and not be guided by the false and delusive shine emanating from the majority opinion of the Court in Lord's case on final decision in the Supreme Court of Louisiana. Right and duty here coincide; you adhere to the cor-

rect opinions and decisions, and reject those you think erroneous.

"It is the settled rule of this Court to follow the decisions of the State courts. But there have been heretofore in *the judicial history of this Court, as doubtless there will be hereafter, many exceptional cases.*" Gelpcke vs. Dubuque, 1 Wall. 175.

"But the construction put upon State statutes by State Supreme Courts may differ at different times; and then to avoid injustice, the United States Supreme Court has adopted as a rule of action the first decision, and rejected the last."—Township vs. Marcy, 92 U. S. 289–294; Taylor vs. City of Ypsilanti, 105 U. S. 60; Watson vs. Tarpley, 18 How. 520.

The present case imperatively calls for a strict application of this peculiar principle of federal jurisprudence to avoid a total miscarriage, thus far, of both federal and State justice. The rights of the whole people of a State should not be sacrificed to the wrongs of a peculiar class of her citizens, in any event, or under any circumstances, in a case or controversy when this court has appellate jurisdiction.—Gormley vs. Clark, 134 U. S. 338.

We say advisedly *the wrongs of a class*, for, from the very beginning of the insolvency of this bank, the shareholders have been *in perpetual default.*, i. e., they have never *exercised* their plain, undoubted legal rights to relief. They should have been *actors* and not *defendants* in all the litigation disclosed in this record.

They have manifestly *slept on their rights,* and by so doing have brought about the very condition of affairs they so loudly complain of, and now they earnestly, almost piteously, desire to place their own self-imposed loss upon the people of the State. It is the State they say, that has violated its contract with them ; that the State's officers have not only been faithless to them and the State, but have spent the bank's assets in riotous living ; and they specially aver that " it would be contrary to equity and good con-" science to require these defendants now to contribute " for any deficiency of the assets which may be now " found to exist after the lapse of so many years of neglect of duty, of mal-administration, of mismanage-" ment and waste on the part of the State and its offi-" cers."—Rec. p. 71 and also p. 67.

The shareholders were eye witnesses to all the wrongs, if there were any imposed on them, and *willingly* submitted to them. *Volenti non fit injuria* They could have sued their managers and forced the speedy liquidation of their bank by compelling the sale, under the lightning process of immediate seizure and sale of all the mortgaged property of all the stockholders, *via executiva.* Any one might bring the suit, but the judgment would embrace necessarily all the stockholders and all the mortgaged property. The Court could make no distinction. But no one acted. All are now forever silenced. *Not one* wanted to pay his just debt. *All* wanted to escape that very result by inaction ; and

this course has been thus far successful. They all relied on time to affect a reversal of the law-axiom, *Vigilantibus at non dormientibus subveniunt leges.* In this case, however, it is not clear by any means that the axiom has been either impaired or overthrown. They have got all the time they wanted and now repudiate the gift of it.

Gas Light Co. vs. Haynes, 7 La. Ann. 114, and ante p. ——, for further authorities.

The stockholders should have sued to rescind their subscriptions, or force the liquidation to an end. It is now too late for them to complain. Banigan vs. Bard, 134 U. S. 294; Brown vs. Iron Co., 134 U. S. 530; Upton vs. Trebilcock, 91 U. S. 55.

IV.

The first article in the defence here contains the main dependence of the stockholders for success; and the point is set forth at great length on Rec. p. 60 to 64 inclusive. It terminates in these words: "That by means and by reason of the premises, the Act No. 100 of 1847 was and became an executed contract, an accepted compromise and a final fixing and settlement of the extent of the liability of the individual stockholders, and no additional contribution can be demanded or required of these defendants or any of them."

At this time (1847) the condition of the bank continued insolvent. The bonds of the State originally

issued for $2,500,000, has been reduced to $1,643,000. Hence, bonds of the State had been paid or extinguished to the amount of $857,000, as appears on Rec. p. 31, submitted by the board of currency to the legislature of Louisiana, prior to the Acts No. 100 and 216 of 1847, dated respectively April 6th and May 4th of that year, the *first* entitled "an act to protect the State against loss on account of its liabilities for bonds issued for the use of the property-banks," and the *second* "an act supplemental to an act," etc., etc. Rec. p. 169 *et seq.* It now appears that about $500,000 of State bonds are in circulation, as shown on p. ante herein, which the State issued to the bank, and are now overdue and unpaid.

If then the State was liable for $1,643,000 bonds issued to the bank when the two acts of 1847 were passed, the payment of which was secured by undoubted mortgages of stockholders on real estate and slaves, it is quite impossible to find a contract in this legislation absolving the shareholders from the payment of that principal and the interest accrued and to accrue thereon for very many years, amounting then to $1,861,325, on January 2d, 1845. Rec. p. 30, 31. And to this amount must be added two and one-half years' interest on the whole at five per cent. per annum to reach the amount due the State on the extension of the bonds $1,861,325

Add 12½ per cent. for 2½ years' interest..... 232,790

Actual amount due to the State $2,094,115

at the time the acts of 1847 were passed.—See also Rec. pp. 183, 192.

It is quite clear, therefore, that the extension of the payment of the bonds six, nine, twelve, fifteen and eighteen years under the acts of 1847 embraced both principal and interest, and that it was simply an act of grace and favor to the shareholders—a pure donation of time. The State gave up none of its securities for the payment of the bonds with the interest thereon already issued to the bank. The bank was trying *to liquidate a present indebtedness* of the Association, and of all the stockholders, and took from almost every one of them an additional authentic act, in which was embraced distinctly and separately both obligations to the bank and of almost all the shareholders ; ***first***, to pay the amount specially due upon their borrowings on their shares ; *second*, to pay the annual contribution of six dollars a share for seventeen years without interest, "according to the legislative act approved the 6th of April."—No. 100 of 1847. Rec. p. 169.

We say plainly—*liquidated and present indebtedness*—meaning thereby not a remote and contingent indebtedness of a subscriber for shares of the bank bought upon an uncertain credit and falling due at an unknown date. The alleged "contract" relied upon by the stockholders, must result, if at all, from some *aggregatio mentium* between them and the President of the Association, Judge Morphy. Quitting the spheres of quality and relation, and entering but for a moment

into the sphere of quantity, let us simply see what the present worth is of a contribution of six dollars a year for seventeen years on every share of stock, interest at five per cent.

The shares are 6000, and $102 on every share equals	$612,000
The present worth of every contribution of $102, spread over 17 years, by a simple arithmetical calculation, is found to be $56;10, which multiplied by 6000 shares, gives..	336,600
Amount of discount or interest on the whole, as follows:	275,400

Interest on each $6 for

.30 .60 .90 1.20 1.50 1.80 2.10 2.40 2.70
1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th,
3.00 3.30 3.60 3.90 4.20
10th, 11th, 12th, 13th, 14th,
4.50 4.80 5.10
15th, 16th, 17th year, $45.90;

$45.90 x 6000 shares, as above.....	275,400

This calculation sustains and establishes that the calls were not to pay anything more than the interest in arrears; and the whole contention of these defendants, on this part of the case, seems totally unfounded.

Walker, Governor, and Charles Gayarre, Secretary of State (Rec. p. 186), and the Association itself, in its statements about January 1st, 1847, all show, at this date, *a present indebtedness* to the State of $770.325.

How could the present worth of the $612,000,

namely, $336,600, pay such a present indebtedness as $770,325!

So far from being a "contract," it was in fact nothing but an expectation that something might turn up to relieve the shareholders from the very heavy loss certain to fall upon them eventually.

We have the best proof of the condition of the bank on several dates about the time of the passing of Act No. 100 of 1847, April 6, Rec. p. 169. These statements were evidently prepared by the officers of the bank in view of, and for the very purpose of obtaining this legislation of 1847. They have been made as favorable as possible for the bank; they all show most clearly a deplorable and absolutely hopeless condition of insolvency.

On Record, p. 183, will be found side by side bank statements of April 21, 1843, and February 18, 1846. The first showing an excess of liabilities over assets, $7,940.34; the second, an excess of assets over liabilities of $39,060.69.

On Record, p. 192 is another statement, January 2, 1847, furnished by the bank to the Board of Currency. Thereupon, January 27, 1847, the Board of Currency wrote to the legislature: "With regard to the Consolidated Association, she owes, according to her statements, for bonds of this State issued in her favor, and due since June 30, 1843, the sum of $552,000, to which must be added $218,325 of interest on State bonds now outstanding; total, $770,325. The Honorable Assem-

bly will, therefore, perceive that the liabilities of the State in behalf of said institution amount for the present to $1,691,941.51."

Not only was the insolvency deplorable, but absolutely *incalculable.* The President of the Association, February 19, 1846, wrote to the State Senate, "That, although the statement (of February 18, 1846), shows a surplus of assets over liabilities of $39,060.69, there will be finally a considerable loss, *a deficit quite impossible to ascertain at the present time.*"

He specified but one item, protested paper, amounting in 1843 to $406,289.60; in 1846 to $455,741.76. The increase in this particular in three years of $49,-452.16 shows the entire worthlessness of the whole item. It was probably all prescribed when Act No. 100 of 1847 was passed.

Another item, however, challenges attention. In this statement (No. 1, Rec. p. 183), the stock loans in 1843 were $1,178,981.27, and in 1846, $987,186.99. With these figures before us, we see that the holders of the 6,000 shares owed the bank for their original subscription, at $500 per share.....$3,000,000.00
And for their stock loans..... 987,186.99

Total liability of shareholders.....$3,987,186.99

when they met to determine what to do about the acceptance of the Acts Nos. 100 and 216 of 1847, which must be read together, as they are on the same subject matter.

Among these defendants will be found the names of some of the persons, or their successors, who have figured in the litigation we have alluded to, *inter alias*, the widow of W. C. C. Claiborne. We see also that the name of Morphy appears, and that Alonzo Morphy was president of the bank at the time of the meeting of the shareholders of June 5th, 1847. He had been judge of the Supreme Court of Louisiana from August, 1839, to March, 1846, when he was superseded by the Constitution of 1845. He was an honest, upright man, and it was in the embarrassments and difficulties surrounding the affairs of the bank that he was called upon to preside over it. Nearly all the stockholders accepted the two statutes of 1847, and their authentic acts were made to Alonzo Morphy as president thereof. The resolutions of the meeting of shareholders are on Record, p. 210, and a copy of the new authentic act on p. 206.

This authentic act puts to flight all possible foundation for establishing a contract between the State or the Association, or both, with the shareholders. It states in these words: "It is expressly agreed: * * * *, 2d, and that nothing in the present act shall be considered as affecting the rights, priviliges, remedies at law and mortgages of the said Consolidated Association resulting in its favor by the act before cited of * * * before * * * .

"Which act remains in full force and virtue, nothing therein being diminished or changed by these presents,

except that which has been stipulated above relative to the delays allowed and to the manner of sale in the event of seizure," referring to the cited act given originally to the bank. *Sublato fundamento cadit opus.*

The argument that it is against equity that the State should be upheld in seeking to enforce payment of the contributions under both acts of 1847 and 1878, is equally unfounded. It is not a fact anywhere shown in this record that any single shareholder has paid the State "*what she, at the outset of her bargain, by herself, proposed and estimated as sufficient to protect her from her liability upon her bonds issued for the Association.*" The answer to the objection is happily put (ante p. 35) by the Chief Justice of Louisiana—"*Prescription is not the coin recognized by creditors for the satisfaction of their claims. It is not money.*" Besides, the alleged "bargain" never had any existence. The idea that the sovereign State was "bargaining," when she was giving, seems untenable. She was certainly not gaining anything. (See Rec., p. 103.) The defendants may rely upon the admissions of counsel (Rec. p. 194), as to the statement of indebtedness marked XXX. (Rec. p. 211.) It is altogether unreliable, as we have shown elsewhere. On the hearing, the main question, how much does each shareholder owe on each of his two obligations, could not by *any* possibility be determined by the Court. It was for the master to decide in case the Court continued its jurisdiction over the case. The question is as yet totally irrelevant except in the way of argument.

It is quite clear that as soon as the Association became a declared bankrupt, the position of the State entirely changed, and all her sovereignty at once revived. She is an *entire* party to this record.—9 Wheat. 904.

It is admitted that $102 was all that was called for on every share under the Act of 1847, and this it is said was $112,000 in excess of the actual deficiency, and the payment of this amount without interest was spread over seventeen years.—Rec. pp. 62, 63.

In the fifth section of Act No. 100 of 1847, the idea that this $102 is for any other purpose than to pay interest past due and unpaid on bonds of the State, is absolutely excluded. It could not be for subscriptions on shares of stock, for "the assets of the bank (other than stock obligations)" were the sole things devoted by the Act "to pay the interest now due." The interest past due and unpaid by the bank on the bonds of the State is the only subject-matter of this section.—Rec. p. 170.

But the subject-matter of the sixth section of this Act was for the management to accumulate a fund "to meet the obligations of the State" *for account of* "this bank, provided the amount required from the stockholders of the Association be divided in equal installments, running "from one to seventeen years"—"*independently of their stock obligations.*"—Rec. p. 170.

It is abundantly clear that an insolvent bank could make no such requisition as contemplated: i. e. faithfully and regularly to meet a principal obligation of

$1,745,000 and $194,750 past due coupons for interest due February 18th, 1846 (Rec. p. 184), by calling for $102 from each shareholder, $612,000 in seventeen years, on a debt for over two millions bearing five per cent. interest per annum.—See Rec. p. 183, 184.

That this view of the matter is correct, is fully confirmed by the declaration of Lord (on Rec. p. 220), as to Act No. 100 of 1847. "The indebtedness of the "several stockholders *for loans* was also extended, and "was divided into annual installments, the first payable in June, 1848, the last in June, 1865." This leaves the responsibility of all the subscribers to stock in full force and virtue, as well as liable for all the installments of their borrowings remaining unpaid.

This view, if not already sufficiently established, further appears from this peculiar fact, viz.: the interest on these particular installments of their borrowings is fixed at seven per cent. per annum, for the reasons stated in resolution 2, Rec. p. 28. The shareholders were entitled to a credit on the books of the bank, "equal to the moiety of the total amount of their shares." See section 6 of the charter, p. 126. When they made use of this credit, they had to "pay the interest for it at the rate that should be fixed for the loans."—Ibid. It was at the rate of *eight per cent.* per annum *discount.* (See Rec. p. 201, at foot.) But the bonds of the State, extended or not, could not bear a higher rate of interest than *five per cent.*—See Sec. 4, Rec. p. 160.

Besides, the State having no claim on the bank, in view of its insolvency, other than the extinguishment of its bonds and interest thereon, has made no call on the stockholders to pay anything, unless when it intervened in the Lord case (ante, p. 22). If it did intervene in that case, it certainly occupied an entirely antagonistic position to the one that it held just one year previous in the Forstall case (ante, p. 11). The effort of the State to obtain relief has always been *through the corporation* until it intervened herein.

But the hypothesis that the shareholders have paid any considerable part of their borrowings of $250 per share, is untenable. The statements of the bank, under dates of April 21st, 1843, and February 18th, 1846 (Rec. p. 183), shows the loans on stock $1,178,981.27 and $987,186.99. This is corroborated by the three statements at different dates on page 191 of record, and further confirmed by the bank's report, January 2d, 1847.

The allegations of the bill (Rec. p. 31) expressly charge the shareholders, *First*, with an absolute liability of $500 for every share subscribed, secured by special mortgage; and *Second*, a large indebtedness for stock loans similarly secured; and these we submit are the two great ultimate facts proved in this case, as they existed when the Act No. 100 of 1847 was passed, and which was the statute involved in the case of the Consolidated Association vs. the State of Louisiana in 1850 (5 Ann. p. 44–54, ante p. 48). The form in which

these two ultimate facts were carried out, appears very distinctly from the authentic act of mortgage (Rec. p. 194) originally passed at the organization of the bank. All the shareholders accepting the Act of 1847, No. 100, executed a new authentic act setting forth "that by act "passed on the * * * before * * * the said "Mr. * * * and the said Mrs. * * * did hy- "pothecate for the security of * * * shares of "the capital stock of the Consolidated Association of "the Planters of Louisiana, amounting to the sum of "* * * and for the loan of * * * granted on "its shares, certain properties described in the said "act, referred to with greater certainty and made "part of these presents."—Rec. p. 206.

In this new authentic act thus executed by those who accepted the benefits of the Act of 1847, the two matters of ultimate fact are treated, as they should have been, as *entirely distinct*. The debt due by the shareholder on his borrowing is divided into eighteen payments each, for capital, and interest at seven per cent. per annum upon the whole of his capital, and payable punctually, for which he gives the Association *eighteen* distinct obligations, with interest.—Rec. pp. 208, 209.

Then follows an additional obligation, evidenced by no written instrument outside of the authentic act, to pay "a contribution of six dollars a share" without interest (Rec. p. 209). It is introduced by the word "besides", in French text "en outre," to show its en-

tire independence of the debt due by the shareholder on his borrowing. The original mortgage act, specially referred to, remaining in full force and virtue, "except that which has been stipulated above relative to the *delays allowed* and to the manner of sale in the event of seizure." Rec, p. 209, at foot.

The record is absolutely silent as to any payment of any instalments of six dollars annually except in the Lord case. And Miltenberger's letter (on Rec. p. 29) is conclusive, in view of his own silence, as well as that of the entire record on the matter.

Now, as to the defendant, Herman Meyer, he bought, dispensing with the certificate of mortgages, and this brings home to him a full knowledge of all the mortgages encumbering the properties. See his deeds, Rec. pp. 115 to 121 inclusive, documents A, B and C, dated 1879 and 1880. The three properties encumbered with a shareholder's obligation as subscriber for forty-six shares of stock, $23,000, not one dollar paid upon it; and a loan to him of unknown amount, on which he has paid $4,692.—Rec. p. 211.

The bank could not credit him on their books with the par value of his forty-six shares, but, at the most, $250 on each share, say $11,500; on this he has paid $4,692, leaving due and unpaid the difference, say $6,608, and not $18,308. The three items are here united, and applied to the view of the case above presented, without regard to the bank's bookkeeping, as set forth on Rec. p. 211.

Herman Meyer, therefore, now owes all his subscription shares, say, forty-three shares, at $500, and $6,608 on his loan from the bank. As to the three defendants, Bernard Lemann, Meyer Lemann and Richard T. Hanson, they also dispense with the certificate of mortgages with the same result as above (Rec. pp. 98 and 101), and are charged with 124 shares. They owe as subscribers $62,000, not having paid a dollar. If they have paid $12,648 to the bank, and still owe $49,352, it is not as shareholders, and could not be as borrowers from the bank, for the reasons above given as to Hermann Meyer (Rec. p. 211). The statement from the books is put in a single item.

The defendants, Pedro and Marie Louise Landreaux. Their answers are on p. 79. Their exhibit is on pp. 110 to 115 inclusive. From this it appears that their ancestor and wife owned a plantation and seventy-five slaves in the parish of St. John the Baptist, and 202 shares of stock in the Consolidated Association of $500 each, and acknowledge themselves indebted to the said Association, first, $101,000 for the shares at $500, and second, the sum of $45,000, amount of credit accorded them on said shares (should have been perhaps $50,500, as indicated by the star both in English and French, i. e. 202 shares, at $250 each). The date of the Act is February 21, 1867, and is called a "substitution of mortgage," and executed by Henry Peychaud, acting as president of the Association, by virtue of a resolution adopted by the directors and administrators at

their meeting, February 1, 1867. The bank credits the heirs with the shares, 202, $101,000, gives credit for the amount paid on the loan, $20,604, and claims as balance unpaid $80,396, instead of $29,896; i. e. $50,500, $20,604 and $29,896 (Rec. p. 211). The defendant, Charles Getzinger, makes a full and detailed statement of the exact status of himself as one of the shareholders and borrowers of this bank.

His statement somewhat condensed is as follows : Henry Hart owned 109 shares of the stock subscription of said Association, and a plantation mortgaged by his predecessor to secure the 109 shares and the stock loans. February 23, 1866, Hart paid the entire balance of stock loan and of contribution levied under the Act No. 100 of 1847, aggregating in principal and interest the sum of $13,219.14 paid said Association. Hart sold the plantation and the 109 shares to Salvant, October 31st, 1867. Salvant sold half the plantation and 109 shares to Joseph Getzinger November 12th, 1868. Joseph sold this half of plantation and shares "*to me*" June 23d, 1870. I bought under execution vs. Salvant's succession, the other half of the plantation, and thus became the owner "of the whole," but the undivided half of the 109 shares was not sold." In the sheriff's deed the stock and loan mortgages are recited and the dates given." Rec. pp. 74, 75. His documents, lettered A and B, are on Rec. p. 90 to 95.

Here the answers exhibit clearly the distinction between the two debts secured by the original mortgage.

They also show that the $60 per share contribution annually for seventeen years was never paid, and never went upon the books of the recorder of mortgages as a live mortgage for $102 per share, for this obligation was evidenced by no document but the second authentic act. Hart, instead of paying as the entire balance of the stock loan and contribution, $13,219.14, would have paid *in addition* $102 per share on 109 shares stock, or $11,118. There is not the slightest inkling in this record that any shareholder other than Lord has never paid any part of this contribution, except by prescription. The books of the bank show (Rec. p. 212) that on the 109 shares of Getzinger there has been paid but $11,118. This is exactly the amount of the 17 annual installments of $6 each on 109 shares! But the shareholders never intended, probably, to bother themselves about these installments if they could avoid it. At any rate, Getzinger states very positively that Hart's payments on these shares was for the *balance of stock loan* and of *contribution*. And we have conclusively shown it could not be for *both* if the contribution was for the seventeen annual installments.—Rec. p. 212

The defendant next in order is B. Beaubay, Rec. 72 and 81. Barnes bought urban property from Mrs. H.C. Cammack, June 28th, 1869, encumbered by fifty-seven shares Association stock, and a loan on said shares. Mrs. Cammack took the reversion of said shares by act recorded June 13th, 1862, and certainly assumed to pay

certain contributions of $6 per share thereon, but they were not included, apparently, in the loans on stock. And there is no evidence that any of these $6 contributions were ever paid. Barnes never definitely assumed anything "but the balance in capital and interest up to June 1st, 1876, to said institution on a certain loan originally made on the aforesaid fifty-seven shares to Charles Caffin and assumed by Mrs. Cammack, dated May 18th, 1857, with interest, costs, etc." Beaubay sold out Barnes under execution, and thereby assumed all the obligations due and unpaid to the bank. It would have been a vain and superfluous act to cause the mortgage for the six dollars annual contribution to be recorded over again. The whole $500 on each share always continued on the record. In Bonin vs. Durand, 2 La. Ann. 776, the true character of these mortgages to this Consolidated Association was declared to embrace both shares and loans, with the pact *de non alienando*. This was in August, 1847.

The next defendant is Mrs. George Josiah Lord, the universal legatee to the final judgment of the Supreme Court of Louisiana, April 23d, 1883, 35 La. Ann. p. 425. Rec. p. 77, pp. 102 to 105. Final judgment on p. 105. Ex. Lord, No. 1 and No. 2. Ex. Lord, No. 3, filed with answer on Record, p. 107, is a copy of the sale of a house and lot on Bourbon, between Customhouse and Bienville streets, in the city of New Orleans, the Mechanics' and Traders' Bank, to the husband of this defendant, dated March 14th, 1850, together with

twenty-two shares of the sum of $500 each, in the capital stock of the Consolidated Association, secured by mortgage on the above described property, agreeably to the charter of said institution. The price paid for both property and shares was $18,000. The act specially sets forth, that by the annexed certificate of mortgage there is no other encumbrance whatever, except this very mortgage for $11,000, on twenty-two shares in the capital stock of said Association.—Rec. p. 108.

It is very clear from this that Lord's vendor, the Mechanics' and Traders' Bank, the owner of the property and the twenty-two shares of stock, owed to the Consolidated Association not a dollar on any existing loan to the original subscriber or his successor. All that was demandable of the Mechanics' and Traders' Bank as due and owing at that time under any circumstances, was literally nothing. The obligation was purely contingent and well known to Lord, who freely admitted it in his answer to the suit of the Consolidated Association.—Rec. p. 220

His answer freely admits away his whole case. He bought the property with the twenty-two shares of stock, which shares defendant (the said Lord) "acquired at the time he purchased the said property." He shows he knew everything about the shares, their value both positive and negative; the insolvency of the bank; the annual assessments of six dollars a share; nay, that he paid some of these, and "that the "purchase of the said stock, which was a mere append-

"age to the property" (mere, only this and nothing "else) "did not impose upon the defendant the re- "sponsibilities of an original stockholder, and that he "did not contract, nor did he incur any liability with "respect to the said Association *other than such* as may "be legally deduced from the facts that he assumed, "in the act by which the said property and stock were "conveyed to him, the mortgage of October 20, 1836, "granted in favor of the said Association by Widow "Duplessis; that he acquired with the property so "mortgaged the twenty-two shares of stock, and that "he paid some of the annual assessments of six dollars "per share without having in any manner obligated "himself so to do; and defendant avers that if liability "can be legally deduced from these facts, which he "does not admit, but does specially deny, such lia- "bility is not other than that of a third possessor of "mortgaged property, and could be enforced only by "the hypothecatory action."—Rec. p. 220.

On reference to the statement on Rec. p. 212 from the books of the bank, it appears that on these twenty-two shares, which Lord assumed, $1,584 has been paid, leaving due and unpaid on his shares the sum of $9,416. As he is the only one shown by this record to have paid any of the seventeen annual installments, this statement of his account is probably correct; but it differs essentially from all the other shareholders above quoted, as Lord was the only one who owed nothing on any borrowings from the bank on his shares.

He has, perhaps, paid twelve of the seventeen annual installments on twenty-two shares, each installment of $132, together $1,584, and for which he may very well be entitled to a credit on a final liquidation.—Rec. p. 212.

This leads to a very important conclusion as to Act No. 100 of 1847. If the judgment in the Lord case be absolutely void for violating the obligation of the contract made by Lord and his transferror with the Association, as the last interpretation put upon it by the majority of the Supreme Court of Louisiana declares, it cannot be the basis of any *res judicata;* and then this case becomes one of a class which, though entirely within the sphere of contract, "depends upon those principles of public policy designed for the protection of the State or of the public, of which we must judge for ourselves."—Deling vs. Insurance Company, 14 Wall 668.

The last of the defendants covered by the final decree of dismissal is the Citizens' Bank of Louisiana. In this case it is quite impossible to reconcile the answers of the bank with the statement from the books of the Association. The bank says (Rec. p. 74), "the entire stock loan and all of the contribution of $102 per share levied under Act No. 100 of 1847, on the aforementioned forty-seven shares of stock have been paid in full by the predecessors and authors of the title of the Citizens' Bank." The bank does not claim that it has paid a dollar upon either the loan made on the

shares or on the subscription. And the statement (Rec. p. 212) from the books, declares the amount paid $4.794; amount due and unpaid, $18.706. It will be again noticed that $4.794 is exactly $102 on each share: 102 x 47 = 4.794.

It further appears from the record (p. 86) that this property now owned by the Citizens' Bank, after a just mortgage given to secure the Consolidated Association on forty-seven shares of its stock, $23,500 and $11,750 on its loans on stock, became subject to a second mortgage in favor of another property bank, to-wit: the said Citizens' Bank, to secure 224 shares of their mortgage stock (see p. 87, at top). This is certainly a very strange spectacle. We fear there is some error here in the bank's answer.

It is now submitted that there is not a vestige of proof in this record that the State of Louisiana by its Act No. 100 of 1847, entered into any contract whatever with any of the original shareholders or their successors, whether by universal title (as Mrs. Lord) or particular title (as Hermann Meyer), to absolve them from the obligations attached to the shares. The law of 1847 came up before the Supreme Court of the State in May, 1852, in Consolidated Association vs. Claiborne, 7 La. Ann. 318. The Court say: "The "term fixed by the charter for the duration and liqui- "dation of the bank having expired, the question pre- "sented relates to the effect of the Act of 1847, as ob-

" ligatory upon the defendant. That he is bound for " his share in any deficiency of the assets of the bank " to meet its debts, is conceded, but the defence is that " he is not bound in manner and form as sought to be " made liable; not bound by the protracted liquidation " imposed by the Act of 1847." This defence was then overruled, and the decision then made would justify the State and a majority of the stockholders in accepting any further extension of the liquidation they might agree upon. It puts to flight all idea of a contract extinguishing all further liability of the shareholders towards the bank and the State under the statute No. 100 of 1847.

See Richmond vs. Irons, 121 U. S. 127.

The president and directors had no authority to contract, and never did make any such contract as alleged.—La. Code, 439.

See Morgan vs. Struthers, 131 U. S. 254.

V.

The seventh assignment of error propounds for solution the question, what is the extent of the liability of the present shareholders, not for the debts of the Association of the Planters, but for the bonds, principal and interest of the State of Louisiana, paid, renewed, extended and scaled by the State, but constituting a debt due to the State, amounting, as shown, to some $500,000! If liable at all, the shareholders claim they are only liable for their share of the debts of the Asso-

ciation, and not for the delinquency of other stockholders, or deficiency of the property mortgaged.

It may be admitted, a. g., that the Association is insolvent and without any assets of its own, for all its assets, if any, are pledged to the State to pay the State bonds. Nor is the question of the *insolvency of any shareholder* material or relevant *now*. We see that the obligation of every original shareholder was *individual* and *several* and that the extent of his obligation has not been diminished by lapse of time; the mortgage granted to secure the payment of his shares exists in full force and vigor, and the call made upon him by the State is to pay up the full amounts of his subscriptions to the shares and all his indebtedness due to the Association. Those shares already extinguished by payment in State bonds, if any, no matter at what price or at what time bought or acquired, may be free from all liability. See section 2 on record, p. 163. The mortgages of the shareholders pledged to the State may have been impaired by the "universal emancipation" and yet the value of the land and the responsibility of the owner of the shares may still be sufficient to pay. The debt cannot be repudiated because the mortgage on the *slaves* has failed.

Louisiana vs. Pillsbury, 105 U. S. 278.

That the obligations of the shareholders are several is proved both by U. S. vs. Knox, 102 U. S. 423, and Gas Light Co. vs. Bennett, 6 Ann. 457. These cases establish in the clearest manner that the only way for the

creditors of an insolvent corporation to obtain relief is by a bill in equity, in which all interested may be made parties either as plaintiffs or defendants. This was pointed out clearly on the oral argument of the Knox case, *ut supra*, by Bradley, J., suggesting on the point "that there was no other remedy for the relators (one of the very property banks of Louisiana) but mandamus": what would hinder the creditor from filing a bill in equity against the receiver and the stockholders and coupling it with an injunction? "The complainants here have resorted to this remedy, and avoided the error committed by the comptroller of the currency. He required from the shareholders of a national bank only 70 per cent. on their subscriptions. His successors in office since as well as the complainants now have avoided this error by claiming the whole 100 per cent. It is possible to return to debtor what has proved to be superficient on the call; but what turns out to be deficient is beyond all redress if not timely obtained. It is no objection to the absolute correctness of the judgment in Knox vs. Citizens' Bank that some recalcitrant, obnoxious and unpaid creditor should complain of the personal injustice resulting from the doctrine of that case. It decides most conclusively that the insolvency of one stockholder, or his being beyond the jurisdiction of the Court, does not in any wise affect the liability of another. But here we are not dealing so much with insolvent stockholders as with solvent ones; it is with an insolvent corporation the State is here striv-

ing to enforce the liabilities of its stockholders, who, in the absence of all proof to the contrary, must by a legal presumption be held solvent, and who have secured their obligation by mortgage on some of the best urban and rural properties in the State, all encumbered with the pact *de non alienando.*

The personal obligation of the original stockholder to the State, through the corporation, was $500 on every share subscribed, secured by mortgage upon real estate and slaves, and for every dollar with interest the Association may have loaned to him, secured by his shares. A person who buys this mortgaged real estate and assumes the mortgage, succeeds to the entire obligation of the original stockholder.

George J. Lord admits that he bought and assumed these obligations, and that he has paid voluntarily a large sum on account of the shares subscribed. He may be entitled to credit for what he has paid, but to no more (see Rec. p. 41). The question whether the present call is excessive does not arise on this appeal. This we submit as the solution to the seventh assignment. Lord cannot be called on to pay any money ever loaned on his shares because there is none now due, and has not been since he acquired the property. The regular business of banking consists in loaning money, not in borrowing it from another bank. And the Mechanics & Traders' Bank has long since disappeared. See 22 Wall. 276, May 3d, 1875. The President, Mr. Morgan, and all the directors knew what they were doing.

when selling, quite as well as Lord did when buying, and both acted evidently on professional advice.

VI.

Legal interest in Louisiana is 5 per cent. per annum, in the absence of a written contract specifying a higher rate.

VII.

All the prior assignments include this: Did the court err in dismissing the plaintiff's bill?

We are free to confess that we are entirely unable to concur in the result reached by the Circuit Court; and neither your Honors nor ourselves have anything to do with the reasons for judgment which led the judge *a quo* to this dismissal, and which have been withheld. But the reasons for judgment in the State Court of Louisiana, where the Constitution prescribes "that the judges of all courts within the State shall * * * in all cases adduce the reasons on which their judgment is founded," *form part of the records* in this Court. We understand by the oft-recurring expression of the appellate courts, "We do not sit here to review his reasons, but to correct his judgment," 7 New Series (La.) 489; "we revise the judgment, not the reasoning;" 2 Peters, 410; "the reason is no part of the judgment itself," 6 Peters, 47; 7 Wall. 110; that the judgment or decree must be strictly confined to what was expressly decided and applied to nothing else. The whole case is here on its merits and no points in it must be neglected,

We are now brought to an examination of an important point of extreme delicacy in the case. There is and always will be, in the very nature of things, a great rivalry between State Courts and Federal Courts. As the country progresses, and the various societies, institutions, corporations and customs change with the increase of the people and the growth of the States, especially if the stream of both of those incidents be deep and rapid, the tendency is daily to decrease the State jurisdiction, and increase the federal jurisdiction; in other words, the State's judiciary see their importance decline by the constant rise in the number of cases tried by the federal courts. The monstrous accumulation of cases in this Court in recent years is of this fact the plenary proof. The opinion of the Supreme Court of Louisiana is an unpleasant evidence of it, likewise, for it intimates in unmistakable language that the Federal Circuit Court of Louisiana has interfered without right in the affairs of this Consolidated Association, and has grievously erred in so doing. As the case of Lord is based, in the Supreme Court of Louisiana, mainly on this interference, and as the judgment therein, if allowed to stand, will validate and perpetuate the charge, it becomes the plain and unavoidable duty of your Honors to see clearly that it is correct, and then to sustain it, by affirming the judgment appealed from; which, on its face, sustains the charges brought by the defence in this

matter, and with which the record is plainly at variance.

The bill alleges that June 17, 1876, "the indi-" viduals constituting the board of managers and direct-" ors then in office abandoned their trust, and the affairs " of said corporation became for the time derelict, and " that thereupon and shortly thereafter, to-wit: on the " 7th of September, 1876," when Max Grebner, a holder of certain bonds of the State and of said Association, for himself and others holding similar securities, filed a bill in the Federal Circuit, E. D. of Louisiana, praying for receivers to said corporation, and for a judicial liquidation of the affairs of said derelict corporation, brought his suit against B. F. Flanders and others.

That said receivers were appointed and said liquidation was proceeding under the control of said Court, when the Louisiana Legislature passed the Act No. 20 of 1878, March 30, of which an official copy was transmitted by the Governor to said Court, requesting its judges to rescind the orders appointing receivers and to restore its assets and affairs to the control of the President and directors of the bank as at present organized under the Act No. 113 of 2853.

That afterwards, June 5th, 1880, in pursuance of an order of discontinuance, the assets were delivered to the president and directors of the Association.

That during the pendency of this suit, thus discontinued, the management of the corporation, as well as the State (but then acting in behalf and in the inter-

est of the shareholders), resisted the liquidation by the Federal Court, urging among other reasons, the heavy charges made by the officers and allowed by the Court, against the assets, which expenses of litigation were mainly attributable to the delays and resistance made by the shareholders.

That in spite of all the delays granted and legislation made to aid these shareholders in settling their dues, they refuse to pay anything, and the president and directors have utterly failed in effecting any liquidation or any application of the assets during all the time they have had control, and that there is no hope of their doing this in the future.

Such are the condensed allegations of complainants.

They are substantiated almost, if not altogether, by the president and directors last appointed and in office. (Rec. pp. 48 to 52 inclusive.) And as facts there is a substantial admission of them by the defendants.—Rec. p. 123.

Now the opinion of the Supreme Court of Louisiana, in giving a statement of the Lord case, declares, says: "The Legislature appear to have abandoned it " (the liquidation) and to have adhered to the emphatic " 'no more' extention contained in the Act of 1866. " Then one of the courts appointed a receiver of the " defunct corporation, who took possession of its assets, " and shortly afterwards some of the holders of the " State bonds issued for it brought suit in the United

"States Circuit Court to have it liquidated there, and "three receivers supplanted the single one who had "been appointed by the State Court."—Rec. p. 103.

Then follows the conclusions of the majority of the Supreme Court on the rehearing, placing its opinion mainly on the delinquencies and delays of the State's officers in their management of this corporation, for which, even if true, the State cannot be held liable. The inference of the Federal Circuit Court is plainly alluded to as having "instead of applying it" (the money which the State is said to have received) "to the purposes for which she had exacted it, squandered it on riotous living."

The language of the Court thus continues: "the "horde of officers, president, vice-president, cashier, "receiver, directors, pass before us in this record in "lengthened procession, laden with salaries, and ple-"thoric with stipends; the lean and slippered stock-"holder, gaunt from forty years' exhaustion, at last "holds up his hands, in eager, passionate suppliance "for relief from this insatiate ever-recurring hunger "for more contributions".—35 La. Ann., p. 436.

This seems to us quite too florid and emotional for the judicial office, and altogether vain, besides being both irrelevant and unfounded. If the charges were not just and proper, the State Court well knew that a competent tribunal had passed upon them and declared them legal, and ordered them to be paid. Yet it must be admitted that the decision is more or less at-

tributed to an unjustifiable interference of the federal judiciary with the Louisiana jurisdiction.

The opinion gives a list of the stipendiaries and salaried officers of the Federal Circuit Court, summarized to the extent of $58,630.74. The list is headed by a U. S. officer well known to this Court, from the cases in which he has prominently figured since the war, as representative of the Federal Government. Next comes the name of the gentleman who has long represented the Government of Brazil at the port of New Orleans; then, following, is the name of a man who died Governor of Louisiana, and who appointed every member of that Supreme Court except Manning, J.; and the balance of the list were the worthy compeers of those to whom we have alluded.

The question of interference cannot, therefore, be avoided. It may be easily settled by a simple recurrence to dates. The third U. S. bankrupt law was enacted March 2d, 1867; and repealed June 7th, 1878. Max Grebner's suit was instituted September 7th, 1876. Hence, at that date, so far as all domestic and foreign creditors were concerned, the federal courts alone had jurisdiction over this bankrupt corporation. Once subjected to their judicial control, that jurisdiction could never be rightcously abandoned or relinquished as long as a single alien interested stood silent, whether before the Court or not. As a large shareholder, the State was buying and selling, dealing, merchandising; and it is too clear, could never plead her sovereignty in bar to pro-

ceedings in bankruptcy, either voluntarily or forced. In point of law, Cressey was just as much an actual and potential party to Grebner's suit as Grebner is here a party to Cressey's; one being simply the renewal and continuance of the other. It is too clear for argument, that whatever be the result of the present litigation, this charge, made part of the record by appellees, cannot be suffered to remain as it is, unrefuted, without, if treated silently, an implied assent to its correctness. It is true, Poche, J., files a separate opinion, giving the reasons for his change, but he reaches the same result as Todd, J. who changes his opinion without any assignment of reason for it.

But although the request is made upon you by a sovereign State to reverse the decree, and you are placed in a like position with the circuit judge, when he received the missive through the Governor of Louisiana, transmitting a like legislative request, you will act with the same caution, circumspection and judgment which were displayed on that occasion. That judge declined to do what he was asked to do in that way. Hence, without the fullest confidence in your jurisdiction, you will not touch this case. But if you find this jurisdiction a matter beyond a reasonable doubt, reverse and remand without the slightest regard to results; put an end to all playing and toying by State courts with the obligations of contracts and the decisions of federal courts made within their undoubted jurisdiction; keep sound, whole and round the States themselves

within their appropriate spheres, and be the one Supreme Court in all its purity and utility as prefigured in the Constitution.

Respectfully submitted,

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GUY M. HORNOR,
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NEW ORLEANS, 6 December, 1890.

APPENDIX.

CONCURRING OPINION OF POCHE, J., IN ASSOCIATION VS. LORD. 35 LA. ANN. p. 438.

POCHE, J. In view of the fact that I had concurred in the previous decree, and of the extended and separate study which I have since devoted to the issues involved in this case, I deem it proper to add my views to the able opinion prepared by my associate.

In our previous opinion in this case we refused to consider the defense urged as to the *quantum* of liability of stockholders to make up the deficit for the payment of the debts of the Association, on account of the bonds issued for it by the State, and advanced the following reasons in support of our course:

1. "The defense, if of any force, that the payment of all the instalments, under the call in 1847, operates as a discharge for the surplus of the subscription, cannot avail the defendant, as he has not paid them."

2. "The defense touching the *quantum* of liability, on the assumption that it could relieve the defendant, cannot be inquired into in the absence of evidence to substantiate it."

After a thorough reëxamination of the record, a careful consideration of the argument of counsel for defendant on their application for rehearing, and an exhaustive review of the authorities relied upon by them, I have reached the conclusion that we had, to a certain extent, misapprehended the exact nature of the defense on this point.

As I now understand the proposition, the resistance is to the power of the Association to make any other call for contri-

bution beyond that required under the provision of Act 100 of 1847.

The State has intervened, joining the plaintiff in the present case, and is, therefore, a party under the pleadings. Hence, to all intents and purposes, the issue presented in the controversy can be tested in the same way as though the State was the real plaintiff, seeking to enforce payment of the unpaid instalments of the call made under the Act of 1847, and of the contribution called for under the authority of Act No. 20 of 1878.

I take it as an undeniable proposition, that this Association ceased to be a going corporation since the 17th of November, 1842, when its charter was judicially declared to be forfeited, and that the amount or extent of the liability of the stockholders to contribute ratably to the payment of the debts of the concern was fixed according to the financial condition of the Bank at that date, and that the corporation was henceforward powerless to perform any corporate act; nothing being then left to do but to proceed to a liquidation of the concern.

Such was the understanding of the State authorities, and of all other parties concerned at the time, and hence, a liquidation of the Association was immediately ordered by legislative authority, under the provisions of Act No. 92 of 1843.

Now, as the State had issued, for the credit of the Bank, all the bonds which were outstanding, and had secured her liability by a pledge on all the stock mortgages and other assets of the corporation, her only security and her exclusive safety consisted in a proper control of the assets of the concern.

Hence, it is, that Section 3 of the Act provides: "That the assets of the Consolidated Bank of the Planters of Louisiana are and shall remain in the possession and under the exclusive management of the State of Louisiana, until final payment of all the State bonds issued in its favor."

Proceeding in the liquidation the State authorities soon

reached the conclusion that a call on the stockholders was necessary to create a fund needed for the payment of the debts.

This prompted further legislation on the subject, and culminated in Act No. 100 of 1847, which made ample provision to that effect. Section 6 ordered: "That it shall be the duty of said managers and directors to require such annual or periodical payment from the stockholders of the Consolidated and Citizens' Bank, independently of their stock obligations, as will accumulate a fund sufficient to meet, faithfully and regularly, the obligations of the State for account of these Banks; provided, the amount required from the stockholders of the Consolidated Association be divided in equal instalments, running from one to seventeen years," etc.

In obedience to this mandate the board of directors of the plaintiff Company met on the 6th of June, 1847, and adopted the following resolution:

"Résolu qu'aux termes de l'acte approuvé le 6 avril 1847, une contribution de six piastres par action sera payable par chaque actionnaire de l'Association Consolidée le ler de juin de l'année 1849 et le ler de juin de chacune des seize années qui suivront."

This contribution was equivalent to a call of $102 per share, and the number of shares being 6,000, the total amount contemplated in the call was, therefore, $612,000.

The resolution was made in express compliance with the requirements of the Act; it must have been preceded by an examination into the financial condition of the concern, and it must have been predicated on a full statement of the debts to be paid, and the amount of the assets then held in pledge by the State. Hence, the resolution of the Board must be construed as a declaration from the State to the stockholders, that a payment of $102 on each and every share held by them would release them from any and all liability as stockholders, on account of the bonds issued by the State in favor of the corporation.

This declaration when acted on and accepted, as it was, by the stockholders, ripened into an inviolable contract between the State and the stockholder. If any stockholder, having no loan mortgage, had then stepped up to the bank, and had paid in full the amount which was exigible only by instalments in seventeen years, it will hardly be gainsayed that he was entitled to a full discharge. How then can it be conceived that, in the legislative mind, any other call was then possibly contemplated?

The well known history of this interminable liquidation informs us that this contract has not been faithfully executed by the board entrusted with its management, and the subsequent insolvency of a large number of the stockholders has rendered impossible any collection from them.

Although the law provided very rigorous measures to secure and enforce the payment of the instalments under the call, such as pledges on growing crops and the like, it appears that many instalments remain unpaid. It appears further, that by means of large, useless and extravagant expenditures, in the shape of unnecessary salaries and lawyer's fees, a considerable proportion of the assets realized have been misappropriated, and that a large deficiency still exists, to supply which an additional call of forty dollars per share has been made by the board of directors under authority of Act No. 20 of 1878.

Without the necessity of passing upon the alleged unconstitutionality of that Act and of the Act of 1866, under which this liquidation, which was to have legally terminated in 1865, has secured a new lease of life, it is safe to conclude that, under the effect of its own legislation and under its solemn contract with the stockholders of this corporation, the possession and control of whose assets was taken by the State and administered under her instructions and under her authority, the State alone must be held responsible for all the acts of maladministration and spoilation, including the unwarranted interference of a federal

court, which have together brought about the result with which we are now concerned.

By her own acts the State has placed herself in the attitude of a creditor who accepts the surrender of his debtor and undertakes to husband the latter's resources. Such a creditor could find no relief in the courts, if his failure to realize assets sufficient to satisfy his claim could be traced to the negligence and mismanagement of his own agents and employees. The neglect of duty and other unauthorized acts of the officers of the State, in this liquidation, have been expressly acknowledged and proclaimed by the legislature in the preamble of Act No. 20 of 1878.

For the reasons given in our previous opinion, the plea of prescription against the unpaid instalments claimed of the defendant, under the Act of 1847, must be sustained.

I, therefore, concur in the decree.

Office Supreme Court U. S.
FILED,
JAN 12 1891
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 145.

WILLIAM CRESSEY AND THE STATE OF LOUISIANA, APPELLANTS,

vs.

HERMANN MEYER ET ALS., APPELLEES.

BRIEF IN BEHALF OF THE APPELLEES.

STATEMENT.

J. D. ROUSE;
WM. GRANT,
Solicitors for Appellees.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 145.

WILLIAM CRESSEY AND THE STATE OF LOUISIANA, APPELLANTS,

vs.

HERMANN MEYER ET ALS., APPELLEES.

BRIEF IN BEHALF OF THE APPELLEES.

STATEMENT.

The Consolidated Association of the Planters of Louisiana was a banking corporation created by the act of the Louisiana Legislature approved March 16, 1827, and amended by act approved February 19, 1828. (R., pp. 124–133.)

By the first of said acts it was provided that a capital amounting to two million dollars should be raised by means of a loan to be obtained by the directors of the institution, and it was provided that a subscription of two million five hundred thousand dollars, divided into shares of five hundred dollars each, should be obtained, the purpose of which

was to secure the loan for two million dollars, of which the capital was to be composed. Failing to obtain the loan contemplated by the act of 1827, the act of 1828 provided for the issue of two million five hundred thousand dollars in bonds of the State, which were to be used by said bank in procuring and securing the sum of two million five hundred thousand dollars, to which the capital had been increased. The subscription to stock authorized was also increased to $3,000,000. The subscribers to the capital stock were not required nor expected to pay any money for the stock subscribed for by them, and no provision was made in the charter for any calls upon the stockholders, nor for any contributions by them, but each stockholder was required to give a mortgage in favor of the association on lands and slaves equal in value to the number of shares taken and subscribed for by him, in consideration of which a credit was to be opened in said association in his favor equal in amount to one-half of the par value of the shares taken by him, which credit was to be exercised by the way of a loan to the stockholder, to be represented by his note or obligation, payable in such annual installments as would extinguish the entire amount before the expiration of the charter.

The bonds issued by the State were payable to the order of the president, directors, and company of the association, in consideration of which two thousand shares of stock of the par value of one million dollars were given to the State as a bonus.

Said bonds were made payable, one-third each, on the 30th of June, 1833, 1838, and 1843.

The bonds due in 1833 were paid. Under the authority of the act of March 31, 1835 (R., p. 137), the bonds maturing

in 1838 and 1843 were exchanged for new bonds maturing in 1848.

On the 17th of November, 1842, the forfeiture of the charter of said association was judicially declared for insolvency at the suit of the State.

In anticipation of such decree of forfeiture the Legislature had passed the act of March 14, 1842 (R., p. 155), under authority of which three managers were appointed to liquidate its affairs, and in the act of April 5, 1843, 3d section (R., p. 164), the Legislature declared that its assets "are and shall remain in the possession and under the exclusive management of the State of Louisiana until final payment * * * of all the State bonds issued in its favor." By the same act the managers were increased to six, and their appointment vested in the Governor.

The possession and exclusive management thus taken and assumed by the State continued without change until after the passage of the act No. 100, approved April 6, 1847. (R., p. 169.)

The State's managers ascertained before the passage of act No. 100 that the deficiency of assets of the association for the payment of its debts would be about five hundred thousand dollars, which could be supplied only by contributions by the individual stockholders, for which there was no provision in the charter.

By said act a plan of liquidation was proposed by the State to the stockholders of the association and to the holders of the bonds of the State issued for its use, which plan required for the relief of the State—

First. The extension of the payment of the bonds of the State.

Second. A levy or contribution on the shares of stock sufficient, with the assets of the association, to meet the bonds so extended.

Third. The control of the liquidation by the State.

The second section of the act provided for the appointment by the State of three bank managers, one of whom was to be president of the consolidated association, and the stockholders were to elect three directors, who, with the three managers appointed by the State, were charged with the liquidation, but with this express proviso, "that no act of the directors shall have any validity or force until it shall have received the sanction of two of the managers representing the State." Sec. 3. (R., p. 170.)

The stockholders, at a meeting called pursuant to section 3 of said act, held the 5th of June, 1847, accepted said plan and elected the three directors provided for in said section. (Answer, R., p. 62.) The said directors, in conjunction with the three managers appointed by and specially representing the State, in pursuance of the authority conferred upon them by sections 3 and 6 of said act, ascertained that the deficiency of assets would be about five hundred thousand dollars, and determined that a contribution of one hundred and two dollars per share, payable in seventeen equal annual installments, as provided for and required by said section 6, would be sufficient, with the assets of the association, to meet the bonds of the State at the extended terms of payment which had been authorized. In fact, said contribution on six thousand shares of stock then outstanding was one hundred and twelve thousand dollars in excess of the actual deficiency. (Answer, R., pp. 62, 63.)

Having determined the amount of contribution required as aforesaid, said managers and directors levied the same upon the stockholders, payable in seventeen annual installments, of six dollars per share, the first being payable on the 1st day of June, 1849, and the last upon the 1st day of June, 1865, for which several installments the stockholders gave their notes, secured by mortgage. (Answer, R., p. 63.)

Said managers also ascertained and fixed the amount in capital and interest due by each stockholder for his stock loans up to June 1, 1848, and divided that amount into eighteen annual installments, with interest added from the 1st of June, 1848.

The holders of the State bonds issued to said association accepted this plan of liquidation, and approved and ratified the same by consenting to the extension of payment of their obligations for six, nine, twelve, fifteen, and eighteen years. (Answer, R., p. 63.)

By the act of March 15, 1855 (R., p. 174), the management of said association was authorized to invest its assets in loans at a discount of eight per cent. per annum.

The extension of the bonds until the payment of the last of the annual installments of six dollars per share assessed under the act of 1847 to June, 1865, was virtually a continuation of the liquidation to the same period. It might have been continued beyond the 30th of June, 1865, with the consent and action of the Legislature and the stockholders before the expiration of the period to which the maturity of the last series of the bonds and the last of the sevent annual installments had been extended.

No action was taken either by the Legislature or the stock-

holders to continue the liquidation, and it terminated on the 30th of June, 1865.

By the act of February 26, 1866 (R., p. 174), the managers and directors were authorized to negotiate the postponement of the payment of the bonds and coupons in favor of the bank for a period of ten years and no more, and provided that the liquidation of the State might be continued until the maturity of the bonds and coupons thus extended.

The stockholders were never consulted about this new extension; never acted upon it, nor availed themselves of it in any manner whatsoever.

The ten years limited by this act expired in 1876. No action was taken by the Legislature or by the stockholders to continue the liquidation.

A receiver was appointed by the superior district court for the parish of Orleans, who took possession of its assets and entered upon their administration. Subsequently receivers were appointed by the circuit court of the United States for the eastern district of Louisiana, who took possession of the assets and administered them until they were discharged and the assets turned over to State officers appointed under the provisions of the act of March 30, 1878. (R., p. 175.)

On the 12th of December, 1883, the complainant, William Cressey, filed his bill (R., p. 1) in the United States circuit court for the eastern district of Louisiana, alleging himself to be the holder of certain bonds issued by the State in favor of said Consolidated Association of the Planters of Louisiana, and obtained the appointment of a receiver. He subsequently amended his bill (R., p. 19), making the appellees and a large number of other persons defendants, averring that they were stockholders of said consolidated association

and as such liable for the amount of their stock, and that the collection thereof was necessary for the payment of the bonds held by complainant, and of other holders of similar bonds outstanding.

The State of Louisiana filed its petition *pro interesse suo*, adopting in substance the averments of complainant's bill and amended bill, and joined in the prayer thereof. (R., p. 45.)

The defendants' demurrers and pleas having been overruled, they filed their several answers, upon which issue was joined. (R., pp. 60 and 122.)

Upon final hearing a decree was rendered in favor of the appellees dismissing said complainant's bill at his costs, and complainant and the State of Louisiana appealed. (R., p. 224.)

Argument.

Besides the special defenses interposed by each of the appellees they interpose the following defenses common to them all.

1. Novation and extinguishment of their obligations as stockholders by the contract made under and pursuant to act No. 100 of the Legislature of the State of Louisiana, approved April 6, 1847, and satisfaction of the obligations therein contracted.

2. Prescription.

3. Want of privity between complainant and defendants necessary to support this suit.

I.

Said act No. 100 of 1847 and the proceedings had pursuant thereto constitute a compromise and contract between the State and the stockholders. The insolvency of the association had been judicially declared nearly five years before the passage of the said act.

The act is entitled "An act to protect the State against loss on account of its liabilities for bonds issued for the use of the property banks."

Section 6 of said act expressly required its managers and directors to levy a sufficient amount upon the stockholders, which, with the other assets of the corporation, should accumulate a fund sufficient to pay the obligations of the State issued to it.

At a meeting of the board of managers and directors held on the 5th day of June, 1847, a committee was appointed, and reported to said board its opinion "that in proceeding to a liquidation the object must be to secure the payment of the obligations and the interest thereon, and to that end recommended that the accounts of the stockholders should be settled, and that the payment of the balance to each account, with 7 per cent. per annum interest in equal annual installments, extended from one to eighteen years without any further delay, and that a contribution of about five hundred thousand dollars must be paid by the stockholders in seventeen years in equal installments without interest, and that a speedy and faithful execution of those measures would probably determine the holders of the obligations of the State to postpone the payment of those obligations according to the law or to wait for the payment thereof with-

out passing any contract to that effect." Said committee reported certain resolutions, which were adopted by said board of managers and directors, the first of which is:

"*Resolved*, That, according to the legislative act approved the 6th of April, 1847, a contribution of six dollars per share shall be paid by each stockholder of the consolidated association on the 1st of June, 1849, and on the 1st of June of each of the sixteen ensuing years." (Amended bill, R., p. 28.)

Provision was also made for the extension of the term of payment of all stock loans then due and a division thereof into eighteen equal annual installments.

The contribution levied upon the stockholders was equivalent to a call of one hundred and two dollars per share, and, the number of shares being six thousand, the total amount contemplated in the call was, therefore, six hundred and twelve thousand dollars.

The resolution thus passed in compliance with the requirements of the act was preceded by an examination into the financial condition of the concern, and was predicated on a full statement of the debts to be paid and the amount of the assets then held in pledge by the State.

"Hence the resolution of the board must be construed as a declaration from the State to the stockholders that a payment of one hundred and two dollars on each and every share of stock held by him would release them from any and all liability as stockholders on account of the bonds issued by the State in favor of the corporation."

"This declaration when acted on and accepted, as it was by the stockholders, ripened into an inviolable contract between the State and the stockholders. If any stockholder having any loan or mortgage had then stepped up to the bank and had paid in full the amount which was exigible

only by installments in seventeen years, it will hardly be gainsaid that he was entitled to a full discharge. How, then, can it be conceived that in the legislative mind any other call was then possibly contemplated?" Concurring opinion of Mr. Justice Poché in Association *vs.* Lord, 35 La. Ann., 440.

It will not do to say now, after the lapse of more than forty years, that this assessment levied by the bank managers, representing the State, and the directors, representing the stockholders, was not sufficient for the purpose intended. It was accepted by the State as sufficient through the bank managers; it was accepted by the stockholders through the directors; it was accepted by the bondholders by their voluntary consent to the extension of the bonds to periods corresponding with the maturities of the contribution and of the loan debt, and by receiving payment by fifths. It was also accepted by all parties in interest by their silence and their acquiesence for more than thirty years. During that long period neither the State nor the association in liquidation made any attempt to supplement the contribution levied under the act of 1847, and this suit, brought more than thirty-six years after that contribution was levied, is the first attempt made by a bondholder to reach the individual stockholders.

The State, the maker of the bonds, the primary obligor and principal debtor, and the stockholders, not parties to the bonds and liable only ultimately and for the actual deficiency of assets, chose to refer to the bank managers and directors the fixing of the amount of the deficiency and the levying of an assessment sufficient to supply that deficiency. In doing this these managers and directors were performing

a solemn and judicial duty, and their action was approved and accepted by all the parties in interest.

Who has the authority now to say that these chosen representatives of the State and stockholders did not perform their duty, and that the assessment which they made under the authority of the law was not, in point of fact, sufficient for the purpose for which it was made and accepted?

The State was then, and had been since 1842, in the exclusive management and possession of all the bank's assets. It had a right to such possession as pledgee thereof. By this act it required its managers to ascertain the deficiency of assets for its reimbursement for the bonds loaned to the association, and to enforce its pledge and the obligations of the stockholders by requiring them to pay such sums as would accumulate a fund sufficient to meet faithfully and regularly the obligations of the State issued upon account of the bank.

The persons appointed to perform this duty ascertained the deficiency of assets to be about $500,000, and they determined that a contribution of $102 per share would, with the other assets, be sufficient to meet the liability of the State upon said bonds. These are facts averred in the answer (R., p. 62) and admitted by complainant and the State. (See stipulation, p. 125.)

Thus the liability of the stockholders, which became fixed by the forfeiture of the charter in 1842, was ascertained and the amount thereof determined in 1847. The State might have required each stockholder then to pay in cash the amount of his liability so fixed and determined, and the money to be applied to the payment of its bonds then about

to mature. If it had done so, for what would the stockholder have remained liable? Does it make any difference in principle that the State saw fit to receive a portion of the amount in cash and the balance in the obligations of the stockholders, extending over a series of years, secured by mortgage? As against the pledgor the State, the pledgee, could not thus dispose of the pledge without discharging the pledgor of all further obligation. By the State's action the pledge was satisfied and the debt of the association forever discharged. The amount required was amply sufficient to supply the deficiency of assets, and nearly the whole amount was collected.

It is so averred in the answer (R., p. 63) and admitted by complainant (R., p. 125), and any deficiency which now exists results from the fault, mismanagement, maladministration, and neglect of duty on the part of the officers of the State. These facts are also averred in the answer (art. V) and admitted by complainant.

Among other acts of maladministration by the State was the investment of the assets under her control in discounting paper as authorized by the act of March 15, 1855. (R., p. 174.)

The charter of the association did not provide for any calls upon stockholders for their subscriptions. The theory of the promoters of the enterprise was that the association would not impair the fund raised by the sale of the bonds loaned to it by the State, but would add thereto by the accumulation of profits, which were to remain undivided until the expiration of the charter, when it was supposed that not only would the association be able to *reimburse* the State for

the loan of its bonds, but have a large surplus for division among the stockholders.

The subscriptions authorized by the act of 1827 were "*intended* to secure the loan of two millions of dollars" (sec. 2, p. 124), for which the bonds of the association were to be issued, as provided in section four of said act, the whole of which loan was required to be "exclusively appropriated to loans on notes or obligations secured by mortgages on immovable property." (Section 12, art. 12, p. 129.)

The association, having failed to borrow any money upon its own bonds, obtained the loan from the State of its bonds, and the obligations of the stockholders subscribed to secure the loan upon its own bonds, which it had failed to negotiate, were required to be pledged to the State to secure its reimbursement. (Act of 1828, sec. 6, p. 133.)

The obligations of the stockholders were in no manner changed by this act. Their obligation was to make good any deficiency of assets for the reimbursement of the State.

It became fixed when the charter was forfeited for insolvency, in 1842. The amount of it was then unknown, and no steps were taken to ascertain it until the passage of the act No. 100, of April 6, 1847.

We have thus far dealt with this question as if it were one of first instance; but the views hereinbefore elaborated have been expressly sanctioned by the decision of the supreme court of Louisiana in the case of the Association *vs.* Lord, (35 La. Ann., R., p. 425), which was an action by the association to recover from Lord contributions assessed against him as a stockholder of said association, payment of which was alleged to be secured by special mortgage on certain urban real estate.

Among the contributions sued for were five of those levied under the act No. 100 of 1847 upon 22 shares of the stock of said association, the other contribution claimed being forty dollars on each of said shares, alleged to have been imposed under the terms of act No. 20 of 1878. (R., p. 175.)

Both contributions were claimed to satisfy an indebtedness to the State and a liability incurred by her for the association. Under an averment of her claim and interest in the enforcement of the demand the State intervened, joining and assisting the complainants.

The defenses interposed were:

1st. That act No. 100 of 1847 was a contract between the State and the stockholders of the consolidated association; that under it the rights and obligations of both parties were definitely fixed.

2d. That the amount of contributions required of the stockholders having been fixed, no additional contribution could be required.

3d. That every stockholder had the right to invoke the benefit of that act and the action thereunder, ascertaining the amount required to be contributed by stockholders to discharge the obligations of the State, as a bar to any claim for further contribution, and that the right to call upon the stockholders for contribution was exhausted in the premises.

4th. That the right to call upon the stockholders for contribution accrued when the association became insolvent; that this right was barred by the lapse of more than thirty years from that date.

The plea of prescription to the claim for contributions levied under the act of 1847 was sustained in the original opinion of the court in that case, but in said opinion the plea of novation was overruled, and the liability of the defendant to the contribution called under the provisions of the act of 1878 was adjudged.

Only three of the members of the court as then constituted concurred in said judgment, and upon a rehearing, which was granted, it was held that—

"The corporate existence of the consolidated association was terminated by the judicial decree of forfeiture in November, 1842, made at the instance of the State. Doubtless in anticipation of this decree the State had already provided, by the act of that year, that the management of the property banks, when their charters were adjudged to be forfeited, should be confided to persons appointed by the State. Immediately after the forfeiture the State, by legislative expression, declared that the assets of this bank are and shall remain in the possessiou and under the exclusive management of the State until final payment of all the State bonds issued in its favor. The Governor accordingly appointed managers, who took charge of the affairs of the bank."

"This exclusive management by the State ceased in 1847, when the State proposed by a legislative act that the stockholders should participate in the management and should elect three managers, the State continuing to appoint the others. This board thus composed was authorized to extend the bonds of the State issued for this bank to periods ranging from six to eighteen years, and enacted that the liquidation of the bank may be continued until the maturity of the bonds thus extended."

This was a permissive continuation until 1865. It was not imperative that it should be thus prolonged.

"This important act further laid upon the managers and directors the duty of requiring of the stockholders such annual payments as would accumulate a fund sufficient to meet the obligations of the State, restricting them only in this, that the equal installments should run from one to seventeen years."

The opinion then recites the meeting of the managers, the resolutions requiring contribution of six dollars per share, the acceptance by the stockholders of the compromise tendered by the act, and their vote to abide by the arrangement and settlement therein provided.

It recites also the fact that the managers and directors had ascertained by careful calculation that an assessment of one hundred and two dollars per share would accumulate a fund sufficient to meet the obligations of the State in behalf of this bank; that such payments would produce six hundred and twelve thousand dollars, and that all of that sum had been paid except thirteen thousand dollars.

After reciting the legislation of 1866, of 1876, and of 1878, under the provisions of which last act the association was proceeding to enforce contributions as aforesaid, the court held that the State was the real plaintiff, the attorney general having appeared in her behalf, and she having intervened and joined the nominal plaintiffs, seeking to enforce payment of the contributions under both acts of 1847 and of 1878. Said the court:

"It is against law and right, and yet more against equity and good conscience, that she should be upheld in it. It is against law, because she tendered and proposed a settlement to the stockholders in the act of 1847, which upon their acceptance of it became a contract with them which she not

only bound herself to perform, but took and held control of the affairs of the dead association in order that she might perform it. It is against equity, because she has received what she at the outset, by her bargain by herself proposed, estimated as sufficient to protect her from liability upon her bonds issued for the association, and, instead of applying it to the purposes for which she had exacted it, squandered it in riotous living."

"The horde of officers—president, vice-president, cashier, receivers, directors—pass before us in this record in lengthened procession, laden with salaries and plethoric with stipends, and the lean and slippered stockholder, gaunt from forty years' exhaustion, at last holds up his hands in eager, passionate suppliance for relief from this insatiate, ever-recurring hunger for more contributions." * * *

"The contribution of forty dollars per share now demanded, when six was deemed ample thirty-six years ago, of itself shows the waste of resources. The exaction of this ruinous contribution by the State, the party who has had control of the resources and committed or permitted the waste, is not justifiable in any aspect.

"One of the causes of this large exaction is that many of the stockholders have become insolvent, and those who are solvent are assessed for the whole. Even if the assessment of 1847 had not been made for the purpose of protecting the State and been ample for it the State cannot increase the burden of each stockholder by holding him, not only individually responsible, but each for the other. United States *vs.* Knox, 102 U. S. R., p. 423; N. O. Gas Light Company *vs.* Bennett, 6 La Ann., p. 457.

"The defendant has paid the installments or contributions under the act of 1847—actually paid thirteen of them—and is protected by prescription from the others. In law he owes nothing on them, and has, therefore, discharged all liability for them. * * * But if he had not paid them, does that non-payment of contributions which he owed

justify the exaction of contributions he does not owe? If a stockholder has not paid those contributions let him be compelled to pay them, but it cannot be legally demanded of him that he shall make good the funds which the State has wasted."

This opinion is printed in full in the record, p. 102 *et seq.*

The concurring opinion of Poché, justice, adds forcible reasons for the conclusion to which the court came, some of which have been above quoted.

It is the rule of this Court to follow the construction given to State statutes by the highest court of the State where enacted. The decision in Association *vs.* Lord must be decisive herein, unless that rule be departed from. If it had not been so strenuously urged that this Court should not be bound thereby in this case, because it was concurred in by a majority of the court only, we would not have pursued the argument at such length. We have done so only to demonstrate the correctness of that decision.

II.

The liability of the stockholders upon their unpaid subscriptions is that of debtors to the bank. Terry *vs.* Anderson, 95 U. S., 636; Ogilvie *vs.* Knox Insurance Co., 22 How., 380. And it has been so enforced in numerous cases, beginning with Consolidated Association *vs.* Claiborne, 7 La. Ann., 318.

Their liability depended upon there being at the end of its corporate existence a deficiency of assets to discharge its liabilities. Its corporate existence, except for purposes of liquidation, was terminated by the forfeiture of its charter

in 1842. The suspensive conditions upon which their liability depended were then satisfied, and the liability that moment became fixed and capable of being enforced. A right of action then arose in behalf of the association against the stockholders for their *pro rata* share of the deficiency, which might have been exercised by its liquidators. Terry *vs.* Anderson, *supra.*

In Terry *vs.* Tubman, 92 U. S., 156, it was held that where the charter of a bank contained a provision binding the individual property of its stockholders for the ultimate redemption of its bills, the liability of the stockholder arose when the bank refused or ceased to redeem and was notoriously insolvent, and that the statute of limitations then began to run. This was affirmed in Terry *vs.* Anderson, *supra*, and applied to the case of stockholders sued for unpaid subscriptions to stock. The same principles have been reiterated and applied in Godfrey *vs.* Terry, 97 U. S., 171, and Terry *vs.* McLure, 103 U. S., 442. See also Carroll *vs.* Green, 92 U. S., 515; Samples *vs.* Bank, 1 Woods, 523; Baker *vs.* Atlas Bank, 9 Metc., 197.

The liability of the stockholders to contribute for the payment of the debts of the corporation is a personal obligation, which must be enforced by personal action, and by the law of Louisiana all personal actions not subject to shorter terms are prescribed by the lapse of ten years (R. C. C., article 3544), and all actions are prescribed by the lapse of thirty years. (C. C., article 3548.)

There is no provision in the charter of this corporation for calls for contribution or for payments on account of stock subscriptions. The right, therefore, to make such calls, if

it exists, depends upon the general law applicable to corporations.

An examination of the several cases decided by the supreme court of Louisiana, which are relied upon to show that unpaid stock subscriptions are imprescriptible, shows that the controlling feature in all of them was that the charters provided for calls. In *Estlin's case*, 12 An., 184, the calls had been made, and the prescription relied upon was that of three years, which is applicable to open accounts, not to the written obligation of the stock subscription.

But if the exact amount of liability must be fixed and determined and a call made upon the stockholders therefor before a right of action accrues, these conditions were fulfilled in 1847.

In either event the prescription pleaded was acquired by the defendants before this suit was brought.

None of the defendants ever assumed the obligations of a stockholder in said association, and all contributions upon the shares, for which their property is sought to be made liable, levied under the act of 1847, were paid by them or their predecessors, except in the case of Lord, who was relieved from all liability by the judgment of the supreme court of Louisiana, which is pleaded as *res judicata*.

If the call made in 1847 could be supplemented no attempt was made to do so until 1880, more than thirty-three years afterward, and the prescription of thirty years is a complete bar to such call. (Civil Code, art. 3548.)

Appellant's contention that the stock subscriptions were secured by a pledge, and therefore their liability thereon imprescriptible while the pledge continued, is without foundation in fact. The theory of such pledge is based upon the

provisions of the sixth section of the act of 1828 (R., p. 133), which required the deposit of the "bonds with privileged mortgage * * * subscribed by the stockholders" in the offices of the association as a guarantee for the reimbursement of the State. If this constituted a pledge by the association in favor of the State, which is not admitted, in what respect would the pledge differ from one made by an ordinary debtor to an ordinary creditor?

The debt or obligation secured by pledge may be imprescriptible, while the debt or obligation given in pledge may be subject to prescription, and may ultimately be actually prescribed.

It may be that the association, during its corporate existence, could not have prescribed against its obligations secured by pledge, and that the liquidators cannot now prescribe against the same obligations; but it would be equally true that a debtor of the association, or an individual stockholder who has made no pledge, has a perfect right to claim the extinction, by lapse of time, of his debt or obligation, whether simple or hypothecary, given in pledge for the debt or obligation of the association. The plea of prescription may not avail the association, represented by the liquidators, in a suit by a creditor of the association, while it would be an impregnable shield to the debtor or individual stockholder against the attack of the association or the liquidators.

III.

The bill, as amended, has a double aspect, looking, first, to the enforcement of the complainant's demand against the State, and, secondly, to enforce the State's demand against its alleged debtors.

The complainant's demand is upon a specialty not yet reduced to judgment. The State is the maker and the bank is the endorser of the obligation. The State is alleged to be the pledgee of the obligations sought to be enforced against the defendants. It is apparent there is no privity between them and the complainant.

In the N. Y. Guaranty Co. *vs.* Memphis Water Co., 107 U. S., 205, the complainants, as holders of bonds of the water company, brought a bill in equity against the water company, the city of Memphis, and others, to have a contract of the water company with the city of Memphis declared valid and to compel the city of Memphis to comply with its terms, in order that the moneys alleged to be due thereon from the city might be applied to the payment of the bonds held by the complainants and others.

The object of the bill was the same as in this case, and it was dismissed because there was no privity between the holders of the bonds and the parties to the contract sought to be enforced.

So in the "Tennessee Bond Cases" (114 U. S. Rep., 685), which were suits brought by the holders of unpaid bonds of the State of Tennessee, issued to various railroad companies, to enforce the lien which was vested in the State upon the property of the companies respectively as a security for the payment of the bonds and the accruing interest thereon, the lien was established by the law under which the bonds were issued, and the question was whether such statutory lien bound the property of the company to which the issue was made for the payment of the bonds so issued and the interest thereon to the several holders thereof, or only to the State.

It was held that the lien was created to secure payment to the State of the amount of indebtedness it thus incurred, and not payment to the holders of the bonds so issued.

And it was further held that the State was the sole debtor of the bonds so issued, and that the obligation of the railroad companies was to the State and not to the bondholders; that the State did not at any time hold the relation of surety to such holders, but was at the outset and remained the sole debtor bound on the bonds.

So in this case the State of Louisiana is the sole obligor on the bonds sued on. This has been twice decided by the supreme court, first in Lesassier & Binder *vs.* Board of Liquidation, 30 A., 611, and affirmed in Forstall & Sons *vs.* Board of Liquidation, 30 A., 1151.

It necessarily follows that the security required from the association, like that in the "*Tennessee Bond Cases*," was for the protection of the State and not of the bondholders, to whom the association owed nothing; that it was intended to secure the obligation created in favor of the State by the loan of its bonds to the association, and that it could have but one debtor therefor.

IV.

The liability of the stockholders was several and not joint. They were not guarantors or sureties one for another. Each one was bound to contribute his *pro rata* of the deficit according to the proportion of his shares to the whole capital stock. The insolvency of one stockholder did not in any way affect the liability of another. These are the established rules applicable to such a case as laid down by the Supreme Court in United States *vs.* Knox, 102 U. S., 422, wherein they

followed and approved Crease *vs.* Babcock, 10 Metc., 525, and other well-considered cases there cited.

The proper authorities, having made an assessment sufficient to supply the deficiency of assets, exhausted their power and were without authority to make another. Matter of the Hollister Bank, 27 N. Y., 393; United States *vs.* Knox, *supra.*

V.

None of the original stockholders in the Consolidated Association of Planters of Louisiana are now before the Court.

The conditions of the titles of the several appellees herein, under which it is claimed they have become liable to or that their property is affected by the claims asserted for contributions to make good the deficit in the assets of said association, are now here stated:

1. HERMANN MEYER denies that he was ever indebted to said association upon any account whatever. He owned and possessed three plantations which were at one time mortgaged to said consolidated association to secure subscriptions to certain shares of its stock. The first is the Emily Mason plantation, which he acquired by purchase from Meyer, Weis & Company, who in their act of sale made no mention of any such mortgage or encumbrance upon the property. (R., p. 115.)

The second property he acquired from Henry Shepherd, January 3, 1880, being a plantation known as the "Ingleside," in the act of sale of which no mention is made of any such mortgage or encumbrance. (Act of sale, R., p. 117.)

The third property is the Limerick plantation, acquired from Henry Frellsen December 13, 1880, in the act of sale

of which it is stated that the property "is sold *subject to* the mortgage in favor of the Consolidated Association of Planters of Louisiana, and against which the said Henry Frellsen does not in any way warrant, *if any such exists*" (R., p. 119); but said Meyer did not assume the payment of any such obligation.

In his answers to the interrogatories said Meyer admits that after his purchase of said several plantations he was informed that the same were at one time subject to mortgages for the shares of stock of said association subscribed for by former owners of said several plantations, but that the entire loan debt and the contributions levied under the act No. 100 of 1847 were fully paid before he acquired said plantations, which information was obtained from the receiver of said association on the 19th of March, 1885. There is no evidence in the record of the existence of these mortgages or that they were ever recorded.

2. BERNARD LEHMAN, MEYER LEHMAN, and RICHARD T. HANSON, in answer to the interrogatories, denied all indebtedness by assumption or otherwise to said consolidated association; admitted ownership in indivision equally of a certain sugar plantation which had originally been mortgaged to said association by their predecessor in title to secure one hundred and twenty-four (124) shares of stock therein which belonged to him; that the mortgagor had parted with his title to one Miss Lefernier, who assumed the responsibilities of a stockholder to the extent of said shares and paid the contributions under the act of 1847 thereon; that her heirs afterwards sold this plantation to Bernard Lehman, who sold and conveyed to Meyer Lehman and

Richard T. Hanson each one undivided third thereof. (R., p. 75.)

These defendants assumed no obligations in favor of said consolidated association. (Act of sale, R., pp. 96 and 99.)

3. BARTHELEMY BEAUBAY, in answer to the interrogatories, also denied any indebtedness to said association; admitted that he acquired at a public sale made by the sheriff of the parish of Orleans certain property in the city of New Orleans which had been originally mortgaged by Charles Coffin and wife to said association to secure sixty-seven (67) shares of its capital stock, afterwards reduced to fifty-seven (57) shares; that said property at the time of said sale to him was burdened with a mortgage in favor of said association in the sum of two thousand five hundred and sixty-five $\frac{4}{100}$ ($2,565.04) dollars, which amount he assumed as a part of the price of the sale to him and paid in full when it became due. (See his answer, pp. 72 and 73, and act of sale, R., p. 81.)

4. THE CITIZENS' BANK OF LOUISIANA owned and possessed a sugar plantation in the parish of Iberia which had been mortgaged by Charles Olivier and his wife to secure forty-seven (47) shares of the stock of said association, and also to secure a stock loan of eleven thousand seven hundred and fifty ($11,750) dollars. The bank acquired this property from the succession of said Olivier on the 4th day of November, 1871, at a sale made by the sheriff of said parish. (See writ and act of sale, R., p. 88.)

The bank subsequently sold this property to McCowen & McGill, who having failed to pay for the same it was again seized and sold at the suit of the Citizens' Bank, the bank

becoming the purchaser on the 7th day of February, 1874. In neither one of said purchases did the bank assume any of the obligations of a stockholder in said consolidated association.

The entire stock loan and all contributions of one hundred and two dollars per share levied, under act No. 100 of 1847, upon said forty-seven (47) shares of stock were paid in full by the predecessors and authors of the title of the Citizens' Bank. (R., p. 74.)

5. CHARLES GETZINGER owned the undivided half of a plantation which his predecessor had mortgaged to said association to secure one hundred and nine (109) shares of stock and loans allowed on such shares, which stock loan and all contributions levied, under the act No. 100 of 1847, upon said shares had been paid. He afterwards acquired the other undivided half of said plantation at sheriff's sale (R., pp. 74 and 75). The acts of sale of said plantation, pp. 90–92, show that he did not assume any liability in favor of said consolidated association.

6. PEDRO LANDREAUX and MARIE LOUISE LANDREAUX acquired by inheritance from their father and mother two hundred and two (202) shares of the capital stock of said association; the entire indebtedness of their deceased father and mother to said association, as well for stock loans as for contributions, under the act No. 100 of 1847, had been fully paid, acquitted, and discharged before the 21st day of February, 1867; on that date they substituted by agreement with the said association for the property originally mortgaged by their father and mother to secure the said two hundred and two (202) shares of stock, other

property subject to the same charges, clauses, and conditions contained in the original mortgage for the security and guarantee of said two hundred and two (202) shares. Said heirs did not in or by said act or otherwise assume the payment of any sum whatsoever, nor admit any liability to said association on account of said shares, or that anything was due thereon.

7. Mrs. GEORGE J. LORD derives title to certain property in New Orleans as universal legatee of her husband, George Josiah Lord, against whom the suit and proceedings referred to in the answer (p. 64) were instituted, and which are pleaded as *res adjudicata.* Lord bought, in 1850, certain real estate, encumbered with a stock mortgage for twenty-two shares, and assumed the mortgage. He paid all the installments of the call excepting the last five. In said suit his plea of prescription to those unpaid was maintained and the right to make further calls denied (Association *vs.* Lord, *supra*). Thereafter, upon the faith of said decision, she accepted the succession of her husband purely and simply, and procured a judicial mandate cancelling and erasing the inscription of said mortgage against said property (answer to interrogatories, R., pp. 77, 78). The pleadings in Association *vs.* Lord are in evidence (R., p. 218 *et seq.*) and the final decree (R., p. 102), as well as the judgment ordering the cancellation of said mortgage and all assumptions thereof. (R., p. 105.)

From the foregoing it appears that none of these defendants ever assumed the obligation of stockholders of said bank, excepting Beaubay, who assumed and paid the balance of the installments under the call of 1847 resting upon the property when acquired by him. Pedro and Maria Louise Ladreaux inherited a plantation against which stood re-

corded the stock mortgage of their ancestor; and, desiring to free it therefrom, it was, by stipulation, transferred to other property "for the guarantee of the said two hundred and two shares of stock." (Act, p. 114.) They assumed nothing, and their recognition of the mortgage, already satisfied by payment of all the calls made under it, gave it no new vitality.

The decree of the court below should be affirmed.

Respectfully submitted.

J. D. ROUSE,
WM. GRANT,
Solicitors for Appellees.

JANUARY 8, 1891.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1887.

No. 1112.

WM. CRESSEY *et al.*

vs.

MEYER *et al.*

MOTION.

Now comes the State of Louisiana, one of the appellants in the above cause, by M. J. Cunningham, her Attorney General, with Charles W. Hornor, her special attorney, *ad hoc*, and moves this honorable Court to advance this cause for hearing and argument at an early day in the next term, to be appointed by the Court, for the following reasons:

1st. Because the State of Louisiana claims to be a creditor of the Consolidated Association of the Planters of Louisiana and the stockholders thereof, for reimbursement of bonds loaned to said Association in a sum exceeding $500,000; and the delay which will occur if this case takes the usual course will delay the settlement and funding of the debt of the State, now being carried on, to the great inconvenience of the State.

2d. Because the liquidation of the affairs of said Association has been protracted by litigation since 1847 by law-suits and other complications, and it is to the interest of the State and all parties defendants herein that its affairs should be speedily and finally adjusted.

3d. The properties involved number over one hundred, and consist principally of improved city real-estate and sugar-plantations. Improvement and repair of the former have been and still are neglected, and the cultivation of the latter has, in many instances, entirely ceased, owing to the inability of the owners to obtain money upon mortgage to carry on planting operations, which require large outlays of money to make crops. As the mortgages sought to be enforced in this proceeding, in most instances, exceed the value of the property, the State's security will be diminished yearly and in many cases entirely lost during the

delay which will occur before this appeal can be heard in the usual course. Moreover, the State as well as the owners of these properties will be injured in other respects by the withdrawal of so much valuable real estate from commerce for a period of at least four years.

4th. This suit was tried in the Circuit Court as to the appellees; but the decree of this Court will determine the controversy as to all the others, defendants, named in the bill of complaint, exceeding ONE HUNDRED in number, which have not reached a a hearing, and whose cases will be governed by the same facts and principles of law.

The State of Louisiana, therefore, prays this honorable Court to advance the hearing of the appeal in this case under the provisions of section 949 of the United States Revised Statutes to some early day in the beginning of the next term.

M. J. CUNNINGHAM,
Attorney General of Louisiana.

CHARLES W. HORNOR,
Attorney for Louisiana, ad hoc.

Now come the undersigned, being all the other parties in interest in this cause, by their counsel, and move the Court to advance the hearing of this cause upon the grounds stated in the foregoing motion of the State of Louisiana.

J. D. ROUSE,
WM. GRANT,
Of Counsel for Appellees, excepting Citizens' Bank.

H. C. MILLER,
Solicitor for Bank.

R. H. MARR,
Same as Rouse and Grant.

JOSEPH P. HORNOR,
For Appellants.